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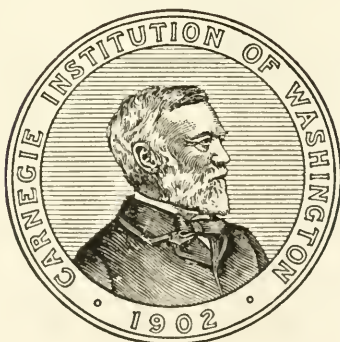
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European Treaties bearing on the History of the United States and its Dependencies

EDITED BY
FRANCES GARDINER DAVENPORT

VOLUME III

1698—1715



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PREFACE.

So long as she was able to continue work, Miss Davenport struggled valiantly to finish the manuscript of this volume. She succeeded in completing all that was most essential—her personal studies, careful in the highest degree, of the diplomatic manoeuvres and negotiations that accompanied and ended the War of the Spanish Succession, her texts, introductions, bibliographies, and notes for the treaties from 1698 well into the notable year 1713, and especially for the complicated *nexus* of treaties that centre around the name of Utrecht. These, she felt, were so connected one with another that there was no stopping-place to her labors till all this ground had been traversed. Essentially, this was done, for though her introductions and notes to the final documents here numbered 102-107 would have contained much that would have been of value, her explanations of the treaties immediately preceding present most of what is necessary for an understanding of those that follow.

The connection of these last six treaties with those which immediately precede is so close that it seemed indispensable to include them in the volume, however imperfect the form in which they must be presented. It fell to the undersigned, who at the time of Miss Davenport's death was director of that department of the Carnegie Institution in which she labored, to give to the manuscript of the volume its final preparation for the press. So far as her work had gone, that is, through Document 101, this meant only slight adjustments and revisions. As to the remaining six pieces, I have had neither the learning nor the time to deal with them as Miss Davenport would have done. The texts are presented, from photographs of originals, and translations, of such of the texts as are not French, have been supplied, it being assumed, as in the case of the earlier volumes, that students of diplomatic history read French. It has been a gratification, though a sad one, to have any part in completing Miss Davenport's work, a monument of scholarship, which, it is hoped, will long keep alive the memory of a woman of remarkable learning, studious, patient, courageous, and devoted to high ideals.

J. FRANKLIN JAMESON.

JUNE 13, 1934.

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INTRODUCTION.

Within six months after the conclusion of the peace of Ryswyk,¹ *i. e.*, on March 14, 1698, MM. de Pomponne and de Torcy, who together directed the foreign affairs of France, stated to the Earl of Portland, the British ambassador in Paris, that Louis XIV. wished to concert measures respecting the Spanish succession with William III., in order to forestall the troubles that must otherwise follow upon the death of the childless King of Spain.² Thirty years earlier Louis XIV. had made a secret treaty with the Emperor Leopold of Austria, providing for a partitioning of the Spanish dominions in the event of Charles II.'s death without lawful issue.³ In the interval so many circumstances affecting the problem of the Spanish succession had changed that Louis had cogent reasons for desiring a new adjustment. The recent war had revealed the inability of the King of France to overcome such an alliance of European states as William III. had formed against him. By means of an arrangement between the two kings Louis XIV. hoped to preclude the revival of hostilities on the part of the coalition, add to his own dominions, prevent the undue aggrandizement of the Austrian Hapsburgs,⁴ and thwart the English and Dutch policy of commercial and colonial expansion in the West Indies.⁵

¹ Doc. 84, in vol. II. of this series.

² Legrelle, *La Succession d'Espagne*, II. 281, 282; Grimblot, *Letters of William III. and Louis XIV.*, I. 291, 292, 295.

³ Doc. 59, in vol. II. of this series.

⁴ Legrelle, *op. cit.*, II. 283, 286, 314, *et passim*; Grimblot, *op. cit.*, I. 273, 274, 381, *et passim*.

⁵ Bonrepaus told Heinsius, April, 1698, that the French desired the maintenance of the *status quo* in the West Indies. Krämer, *Archives d'Orange-Nassau*, sér. III., tom. II., p. 104. Tallard's instructions, dated Mar. 2, 1698, included an injunction to "discover as far as lies in his power, if the King of England, in favoring the designs of the Emperor, does not likewise entertain some notion of profiting by the disputes, to which he foresees the question of the Spanish succession will give rise, to obtain possession, either by force or by secret treaties with the Emperor, of the Spanish possessions in the Indies; and what assistance the nation consents to give him to carry these projects into execution". Grimblot, *op. cit.*, I. 274; *cf.* also Legrelle, *op. cit.*, II. 267 ff. With regard to the efforts of the British to control the Spanish-American slave trade the French representative at Lisbon wrote to Louis XIV. as follows: "J'ai tous les jours de nouvelles raisons de croire que le roi d'Angleterre met en usage de ce côté-ci tout ce qu'il croit pouvoir contribuer au dessein qu'il forme sur les Indes. Son envoyé en cette Court est si plein de la

William III.'s interests in concluding a treaty were to prevent war, for which the English and Dutch were unprepared,⁶ block the aggrandizement of the Bourbons and Austrian Hapsburgs in Europe or America—particularly French control of Spain and the West Indies⁷—obtain a stronger barrier for the Netherlands against invasion,⁸ and secure English and Dutch commerce in the Mediterranean and the West Indies, through the acquisition of additional ports and islands.⁹ The King of England's conscience was troubled by the fact that a secret article of the Grand Alliance of 1689 engaged him to help the Austrian Emperor to take possession of the entire Spanish succession upon the death of the childless King of Spain, and to help him to hold it against the French.¹⁰ But Louis's revelation to him of the Austro-French partition treaty of 1668 weakened his scruples.¹¹

matière qu'il ne peut s'en taire. Il est jeune, vif, parlant quelquefois aisément, et, comme il est fort libre chez moi, je le vois très souvent. Depuis quelques jours, il a traité avec moi cette matière plus amplement qu'il n'a encore fait, me parlant de la grandeur de ce dessein, du droit que l'Angleterre a sur ce pays et de l'usage avantageux qu'elle en pourrait faire plus qu'aucune autre nation. Ce qui lui donne lieu de m'en parler si souvent est la négociation qu'il m'a dit qu'il suivait avec le secrétaire d'État, afin de faire entrer une Compagnie anglaise dans les droits de la Compagnie portugaise de Cacheo pour introduire des noirs dans les ports de la Nouvelle-Espagne. Il m'a fait entendre en dernier lieu qu'il attendait des nouvelles d'Angleterre par le premier ordinaire pour la décision de cette affaire. Cela me fait juger qu'elle est fort avancée." Rouillé to the King, June 17, 1668, Arch. Min. Aff. Etr., Portugal, tom. 33, ff. 170-171. Quoted by Legrelle, *op. cit.*, II. 269, note 1.

⁶ Krämer, *op. cit.*, II. 86; Grimblot, *op. cit.*, I. 312, 321, 324, 346, 348, 359, 375.

⁷ Heinsius feared that upon the King of Spain's death the French would seize the Spanish West Indies. Krämer, *op. cit.*, II. 26, 27, 44, 62, 63, 78, 83, 84, 85.

⁸ Grimblot, *op. cit.*, I. 330, 334, 344, 360, etc.

⁹ Krämer, *op. cit.*, II. 83, 84, 115, 129, 137, 139, etc.; Grimblot, *op. cit.*, I. 326, 330, 331, 334, 344, 360, 362, 377, 390, 395, etc.

¹⁰ The text of this secret article, which is printed in *Veröffentlichungen der Kommission für Neuere Geschichte Österreichs. Österreichische Staatsverträge: England* (ed. A. F. Pribram), pp. 188, 189, and *id.*, *Niederlande* (ed. Heinrich Ritter von Srbik), pp. 275, 276, is as follows: "Postquam ex parte Galliae in variis locis et aulis palam divulgatum est, quod non obstante renuntiatione solemnissima successionem in monarchiam Hispanicam casu quo Rex Catholicus sine prole legitima e vivis decederet pro Delphino indesinenter praetendat vi et armis etiam asserendam, nec obscure etiam eo collimet ut praedictus Delphinus in Regem Romanorum evehatur, Domini Status Generales Foederati Belgii, mature considerantes quantam status publici collisionem et quantum praejudicium publicae rei et tranquillitati tam una quam altera praetensio afferre possit, promittunt hisce separatis articulis non minus ac si foederi principali verbotenus inserti essent valituri: I. casu quo modernus Hispaniarum Rex e vita decederet non relictiis legitimis descendentibus, quem casum Deus clementer avertere velit, se Sacram C'eam M'tem ejusve haeredes ad successionem augustae ejusdem domui legitime competentem in monarchiam Hispanicam et ejus regna, provincias, ditiones, et jura eorumque adipiscendam et asserendam quietam possessionem contra Gallos ejusve adhaerentes, qui se huic successioni directe vel indirecte opponere vellent, omnibus viribus adiuturos et in contrarium attentantium vim vi repulsuros; deinde etiam apud dominos principes Electores Imperii foederatos suos omnia amica officia et studia collaturos, ut quanto citius Serenissimus Hungariae Rex Josephus sacrae C'ae M'tis primogenitus in Regem Romanorum eligatur; et si ex parte Galliae haec electio minis aut armis impediretur, controverteretur aut quo modo libet interturbaretur, se pro eadem tuenda et avertenda vi omnibus pariter viribus sacrae C'ae M'ti opem laturos.

"Invitabitur ad horum etiam articulorum societatem corona Angliae. Actum Viennae 12. Maji 1689. T. A. HENR. comes de STRATMAN, J. HOP."

The following translation of the above article is from *A General Collection of Treatys* (1710), I. 279, 280. The spelling has been modernized. "France having openly declared, in several places and courts, that notwithstanding the most solemn renunciation, they still pretend by force of arms to assert for the Dauphin the succession of the Spanish monarchy, in case his Catholic Majesty should die without lawful issue, and publicly aiming to make the

The negotiations for the treaty were conducted partly between Louis XIV. and the Earl of Portland, but chiefly between William III. and the Count of Tallard, French ambassador extraordinary, who reached London toward the end of March, 1698, and four months later accompanied William to Loo. Throughout, William sought and largely followed the advice of Heinsius, pensionary of Holland,¹² ignoring his English ministers.

Louis XIV., while insisting on the right of the Dauphin to the whole Spanish succession, at first proposed that the Spanish Netherlands be given to the Elector of Bavaria, and the rest of the Spanish monarchy to a younger son of the Dauphin.¹³ William III. preferred that Spain and the West Indies should go to the Electoral Prince of Bavaria, as the least formidable on land and sea of the three claimants.¹⁴ He insisted that if the succession went to one of the Dauphin's children the French would be in a position to ruin English and Dutch trade in the Mediterranean and the West Indies. The principal interest of the English and Dutch, said Portland, consisted in their commerce. The commerce of the Spanish West Indies "was of such great importance that they could not possibly relinquish it nor run the risk of losing it".¹⁵ William suggested that the islands might be divided.¹⁶

Louis was determined that the Spanish West Indies should be kept intact. "The King of Spain", said he, "could never call himself master of this part of the New World if he shared any of it with the English or the Dutch."¹⁷ Neither of the two alternatives for the partitioning of the succession offered by Tallard to William in the latter part of April included any provision for safeguarding English or Dutch commercial interests in either the Mediterranean or the West Indies.¹⁸ When William referred to the necessity of having

said Dauphin king of the Romans: the States General of the United Provinces, maturely considering what a blow either of these pretensions would give to their state, and what prejudice it would bring to the public affairs and quiet, do promise by these separate articles, which are as valid as if they had been inserted word for word in the principal treaty; first, that in case the present King of Spain should die without lawful issue (which God forbid) they will, with all their forces, assist his Sacred Imperial Majesty or his heirs, in taking the succession of the Spanish monarchy, lawfully belonging to that house, together with its kingdoms, provinces, dominions, and rights, and in their obtaining and securing the quiet possession thereof against the French and their adherents, who shall directly or indirectly oppose this succession; and with force repulse the force they bring against them.

"They will likewise use all friendly offices and endeavors with the princes Electors of the Empire their confederates, that the Most Serene Joseph, King of Hungary, his Imperial Majesty's eldest son, may be speedily chosen King of the Romans: and if France should by threats or arms hinder, oppose, or any way disturb this election, they will in opposition thereto assist his Sacred Imperial Majesty with their utmost force.

"The crown of England shall be likewise invited to enter into the agreement of these articles, made at Vienna the twelfth of May, 1689. Signed, T. A. HENRY Comes de STRATMAN, J. HOP."

¹¹ Grimblot, *op. cit.*, I. 478 ff., 482, 490, 501.

¹² Cf. above, p. 355, vol. II. of this series.

¹³ Legrelle, *op. cit.*, II. 303.

¹⁴ Grimblot, *op. cit.*, I. 330, 334, 335, 501, 502, 507.

¹⁵ *Ibid.*, pp. 331, 334, 377.

¹⁶ Cf. *ibid.*, pp. 325-327, 336.

¹⁷ Legrelle, *op. cit.*, II. 312.

¹⁸ The alternatives were: 1. For the Electoral Prince of Bavaria, Spain, the Indies, the Low Countries, the islands of Majorca and Minorca, Sardinia, the Philippines, and the other countries and places now dependent on the Spanish monarchy, except the king-

places for securing their commerce in the Indies, Tallard remarked that "if England and Holland had a port and a fortress on the continent of America the King of Spain would depopulate his dominions to work the mines of which [the English and Dutch] would reap all the profit".¹⁹ Tallard further argued that the occupation of a place in the Indies by either the English or the Dutch would ruin the commerce of all the other states of Europe. These states had hitherto traded with America through Cadiz. If the English and Dutch themselves carried their goods directly to the American continents the other states would lose that trade.²⁰ As to William's tentative suggestion of Havana as a suitable place for securing English and Dutch commerce, Tallard stated that this port was an absolutely necessary *entrepôt* at the entrance to the Bahama Channel, the best place in the Indies and the best fortified.²¹ Louis summed up the French position by declaring that the cession of a port in the Indies, though claimed merely as a means of securing commerce, would make the English and Dutch masters of those countries.²²

The negotiations seemed to have reached an impasse when, near the end of May, Louis XIV. made new offers, again consisting of two alternatives, of which the first conceded something to William's demand for security of commerce. The first alternative allotted to one of Louis's grandsons Spain,

doms of Naples and Sicily and the duchy of Luxemburg, which the Dauphin would retain; for the Archduke Charles, the Milanese. 2. For one of Louis's grandsons, the existing possessions of the Spanish monarchy except the Low Countries, which should go to the Electoral Prince of Bavaria; for the Archduke, Naples, Sicily, and places on the coast of Tuscany; for the Duke of Savoy, the Milanese.

¹⁹ Grimblot, *op. cit.*, I. 425, 426.

²⁰ *Ibid.*, pp. 461, 462; cf. pp. 449, 488.

²¹ *Ibid.*, pp. 426, 462, 473, 504, 505.

²² *Ibid.*, I. 488-490. Heinsius reported to William on May 20 his interesting conversation with De Wildt, secretary to the admiralty of Amsterdam, in regard to the security of West Indian commerce. They had agreed that the principal islands to be considered were Hispaniola, of which the French possessed part, and Cuba; that the islands secured the mainland—that on Hispaniola Guara served best for passing ships; that on the mainland Vera Cruz, Porto Bello, Santa Maria, and Cartagena were of chief importance, so that the masters of those places would be masters of the trade as then conducted but would not be able to resist whoever controlled the hinterland. Heinsius had asked whether, since Cuba and Hispaniola could secure the mainland, the nations might not eventually agree that the mainland where the commerce was actually carried on should be guaranteed by England, the future King of Spain, France, and the States; that its own government should be left to it, and given protection; and that, for the protection both of the government and of the mutual commerce, Cuba and Hispaniola, together with their dependencies, should be placed in the hands of England, France, and the States, each nation having some ports to serve for carrying on its commerce and at the same time for the aforesaid protection. De Wildt replied that this would certainly be the best means, if the districts could be peopled. They agreed on that; but believed it would be very difficult to allot and people the islands. The French could people them easily from the Caribbees; the English would not have much difficulty on account of Barbados and other neighboring islands; but the Dutch had nothing but Curaçao. However, wrote Heinsius, they had not been able to find any better means. Krämer, *op. cit.*, II. 159-162. To this letter William replied that the regulating and securing of commerce both in the Mediterranean and in the West Indies would be infinitely difficult, and that he found himself but little instructed by De Wildt's statements to Heinsius on the matter. Grimblot, *op. cit.*, I. 514. Heinsius, on the other hand, deemed the plan worthy of consideration and in a letter written to William on June 2 reports another conversation touching on it. Krämer, *loc. cit.*, pp. 193, 194.

the West Indies, and other places of the Spanish monarchy, except the kingdoms of Naples, Sicily, and Milan, which were to go to the Archduke Charles on condition that they should not be united to the imperial crown, gave the Low Countries to the Prince of Bavaria, and conceded to the English and Dutch, for the security of their commerce, Ceuta and Oran in the Mediterranean and that part of the island of Santo Domingo that belonged to Spain.²³

Portland found the offer of Santo Domingo unacceptable, since the island was not fortified, and from its situation could not, he thought, be of any use to the English. He mentioned Cuba, but Louis XIV. answered that he had been studying the map and found that whoever possessed the port of Havana would command the entrance of the Gulf of Mexico, and be in a position to cut off the commerce of the possessors of the West Indies.²⁴ Heinsius, who had previously expressed the opinion that the English and Dutch should be on at least an equal footing with the French in the West Indies,²⁵ thought Santo Domingo of some importance, but again emphasized the argument that the French would still remain in control of the silver trade, which the English and Dutch could not hinder from Santo Domingo or elsewhere. He felt that the alternative that assigned Spain, the West Indies, etc., to a son of the Dauphin would be the most dangerous for Europe.²⁶ In accordance with the advice of Heinsius, William informed Tallard that the difficulties in the way of arranging adequate securities for English and Dutch commerce would be so great as to prevent acceptance of the alternative giving Spain to one of the sons of the Dauphin, and that they would have to go back to the other alternatives. He preferred giving Naples and Sicily to the Dauphin, and proposed adding the places held by Spain on the Tuscan coast as an equivalent for Luxemburg; but Tallard insisted on Luxemburg.²⁷

By July Louis, encouraged by the success of his ambassador in Spain in gaining the support of the Spanish statesmen and people for his grandson, believing also that the King of Spain was about to die and hoping to keep the whole succession for a Bourbon, thought of prolonging negotiations.²⁸ He feared that the discovery of an agreement by him to divide the Spanish dominions would turn the Spaniards against him.²⁹ Tallard however warned him that failure to obtain in advance William III.'s consent to the accession of one of Louis's grandsons to the Spanish crown would lead the coalition to make war upon the French, and cause the English and Dutch fleets to seek aggrandizement in the chief ports of Spanish America. He advised Louis to conclude a treaty that would make him master of Italy, except

²³ Grimblot, *op. cit.*, II. 9, 10.

²⁴ *Ibid.*, p. 20.

²⁵ Krämer, *op. cit.*, II. 174.

²⁶ *Ibid.*, pp. 204, 205; cf. pp. 181, 182.

²⁷ Grimblot, *op. cit.*, II. 32-34; cf. Krämer, *op. cit.*, II. 207, 208.

²⁸ On the activities of the French representative at Madrid see Legrelle, *op. cit.*, tom. II., ch. VI.; also pp. 459 ff.

²⁹ Grimblot, *op. cit.*, II. 51.

Milan, and leave the kingdom of Spain, including the Indies, to the Electoral Prince of Bavaria, who would have no other dominions but that and fragments of the Low Countries. Tallard argued further that the Electoral Prince was young and might die, in which event Louis, strengthened by his control of Italy, might satisfy his interests in Spain.³⁰

Louis was persuaded that it was safer to conclude the treaty than to break with William. He proposed more alternatives.³¹ William, determined not to concede Spain and the West Indies to a Bourbon prince, made the following offer: Naples, Sicily, all Spanish places on the Tuscan coast, as well as the province of Guipúzcoa, including St. Sebastian and Fontarabia, were to go to the Dauphin; Milan should go to the Archduke Charles; the remainder of the Spanish monarchy, including the West Indies and the Philippines, to the Electoral Prince of Bavaria.³² Louis, anxious to conclude as soon as possible, accepted William's offer, with the marquisate of Final added to the Dauphin's portion. He felt that this was more advantageous than to place one of his grandsons on the throne of Spain, "abandoning all Italy to the Emperor, and granting places to the English and Dutch in the West Indies and the Mediterranean".³³

The treaty was substantially agreed to by September 8, 1698,³⁴ and signed by the Earl of Portland and Tallard on September 24,³⁵ by Sir Joseph Williamson several days later,³⁶ and by the eight deputies of the States General on October 13,³⁷ two days after the date borne by the document. Three separate articles, of which two were secret, were also signed.³⁸ Ratifications of the treaty were exchanged on the last day of the month,³⁹ and at the same time William signed an additional article.⁴⁰

Having learned of the treaty the King of Spain, in the following month, made his will in favor of the Electoral Prince of Bavaria, bequeathing to him an undivided succession.⁴¹

³⁰ Grimblot, *op. cit.*, II. 54-56.

³¹ *Ibid.*, pp. 57-104, *passim*.

³² *Ibid.*, pp. 105-108. Secretary Vernon wrote to Portland Aug. 19/29, 1698, that he believed "that a parliament would look upon their concerns as satisfied, if a way were found out to keep Spain and the Indies from falling under France". *Ibid.*, p. 130. A few days later Lord Chancellor Somers wrote to William III. that if "England might be in some way a gainer by this transaction, whether it was by the Elector of Bavaria (who is gainer by your Majesty's interposition in this treaty), his coming to an agreement to let us into some trade to the Spanish plantations, or in any other manner, it would wonderfully endear your Majesty to your English subjects". *Ibid.*, p. 145.

³³ *Ibid.*, pp. 112-116.

³⁴ *Ibid.*, p. 147.

³⁵ Legrelle, *op. cit.*, II. 493.

³⁶ Grimblot, *op. cit.*, II. 173, 174.

³⁷ *Ibid.*, p. 177.

³⁸ Two are printed below; the third, published by Legrelle (*op. cit.*, II. 676, 677), provided that if, by virtue of the ninth article, the duchy of Milan fell by sequestration into the hands of its then governor, the Prince of Vaudemont, it would, in case of his death, be administered by his son, Prince Charles of Vaudemont.

³⁹ Grimblot, *op. cit.*, II. p. 182; Legrelle, *op. cit.*, II. 497.

⁴⁰ The text is given in Legrelle, *op. cit.*, II. 696, 697.

⁴¹ *Ibid.*, pp. 580-585.

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References: Later writings. T. B. Macaulay, *History of England from the Accession of James II.* (1901), ch. XXIII., pp. 353-378, ch. XXIV., pp. 388-401; L. von Ranke, *England in the Seventeenth Century* (1875), vol. V., bk. XXI., ch. I.; Sir Richard Lodge, *England from the Restoration to the Death of William III., 1660-1702* (1912), pp. 417-421; A. Legrelle, *op. cit.*, II. 249-507, *passim*; H. Reynald, *Louis XIV. et Guillaume III., Histoire des Deux Traités de Partage et du Testament de Charles II.* (1883), I. 47-171; Baron Sirtema de Grovestins, *Guillaume III. et Louis XIV.: Histoire des Luttes et Rivalités Politiques entre les Puissances Maritimes et la France dans la Dernière Moitié du XVIII^e Siècle* (1851-1854), tom. VII., ch. III.; O. Klopp, *Der Fall des Hauses Stuart* (1875-1888), vol. VIII., bk. XXII.; A. Gaedeke, *Die Politik Oesterreichs in der Spanischen Erbfolgefrage* (1877), I. 214-265; E. Lavisse, *Histoire de France* (1900-1910), tom. VIII., pt. I., pp. 56-62.

TEXT.⁴²

Les Estats Generaux des Provinces Unies, A tous ceux qui ces presentes lettres verront, Salut. Comme ainsy soit qu'entre le Serenissime et Tres Puissant Prince Guillaume III. par la grace de Dieu Roy de la Grande Bretagne, le Serenissime et Tres Puissant Prince Louis XIV^e aussy par la grace de Dieu Roy Tres Chrétien de France et de Navarre, et Nous, l'onzième jour d'Octobre de la presente année mil six cent nonante et huit par les Sieurs Guillaume de Bentinck, comte de Portland, chevalier de l'Ordre de la Jarretière, conseiller au privé conseil de sa Majesté Britannique, son premier gentilhomme de sa chambre, et general de sa cavallerie, et Joseph Williamson, chevalier aussy conseiller au privé conseil de sa dite majesté et garde de ses archives d'estat, le Sieur Comte de Tallard lieutenant general des armées de Sa Majesté Tres Chrestienne et de sa province de Dauphiné, et son ambassadeur extraordinaire en Angleterre, et les Sieurs Francois Verbolt senateur et bourguemaistre de la ville de Nimegue, maitre general des postes dans le duché de Guelres, comté de Zutphen et autres lieux, Fredericq baron de Reede, seigneur de Lier, St. Antoine, Ter Lee, etc., commandeur de Buren, de l'ordre de la noblesse de Hollande et Westfrise, Antoine Heinsius, conseiller pensionnaire, garde du grand seau et surintendant des fiefs de la mesme province de Hollande et Westfrise, Jean Becker, ancien senateur et bourguemaistre de la ville de Middelbourg, Jean van der Does, seigneur de Bergestein, de l'ordre de la noblesse de la province d'Utrecht, Guillaume van Haren, cydevant grietman du Bild, député de la part de la noblesse aux Estats de Frise, et curateur de l'université de Franequer, Arnold Lemker, bourguemaistre de la ville de Deventer, et Jean [de] Dreuws, tous députés en nostre assemblée de la part des provinces de Guelre, de Hollande et Westfrise, de Zeelande, d'Utrecht, de Frise, d'Overijssel, et de Groningue et Ommelandes, en vertu de leurs plein pouvoirs ait esté fait, conclu et signé le traitté dont le teneur s'ensuit :

Traitté fait entre le Roy de la Grande Bretagne, le Roy Tres Chretien et les Seigneurs Estats Generaux des Provinces Unies des Pais Bas :

Soit notoire a tous qui ces presentes verront que le Serenissime et Tres Puissant Prince Guillaume troizieme, par la grace de Dieu Roy de la Grande Bretagne, et le Serenissime et Tres Puissant Prince Louis XIV^e, aussy par la grace de Dieu Roy Tres Chrétien de France et de Navare, et les Seigneurs Estats Generaux des Provinces Unies des Pais Bas, n'ayant rien de plus a coeur, que de fortifier par de nouvelles liaisons la bonne intelligence retablie entre sa Majesté de la Grande Bretagne, sa Majesté Tres Chrétienne, et les dits Seigneurs Estats Generaux par le dernier traitté conclu a Ryswick, et de prevenir par des mesures prises à temps les evenements qui pourroient exciter de nouvelles guerres dans l'Europe, ont donné pour cet effet leurs plein pouvoirs, pour convenir d'un nouveau traitté, savoir : sadite Majesté Britannique aux Sieurs Guillaume de Bentinck, comte de Portland, chevalier de l'ordre de la Jarretierre, conseiller au privé conseil du Roy de la Grande Bretagne, son premier gentilhomme de la chambre et general de sa cavallerie, et Joseph Williamson, chevalier aussy conseiller au privé conseil dudit roy, et garde de ses archives d'estat, et sadite Majesté Tres Chrétienne au Sieur Comte du Tallard, lieutenant general de ses armées, et de sa province de

⁴² The text is from the original manuscript of the ratification by the States General, preserved in the London Public Record Office, St. Pap. For., Treaties, no. 333.

Dauphiné, et son ambassadeur extraordinaire en Angleterre, et lesdits Seigneurs Etats Generaux aux Sieurs Francois Verbolt, senateur et bourguemaitre de la ville de Nimegue, maitre general de postes dans le duché de Guelre, comté de Zutphen et autres lieux, Fredericq Baron de Reede, seigneur de Lier, St. Antoine, Ter Lee, etc., commandeur de Buren, de l'ordre de la noblesse de Hollande et Westfrise, Antoine Heinsius, conseiller pensionnaire, garde du grand seau, et surintendant des fiefs de la même province de Hollande et Westfrise, Jean Becker, ancien senateur et bourguemaitre de la Ville de Middelbourg, Jean Vander Does, seigneur de Bergestein, de l'ordre de la noblesse de la Province d'Utrecht, Guillaume van Haren cydevant grietman du Bilt, député de la part de la noblesse aux estats de Frise, et curateur de l'université de Franequer, Arnold Lemker, bourguemaitre de la ville de Deventer, et Jean de Dreuws, tous députés en l'assemblée desdits Seigneurs Etats Generaux de la part des Provinces de Guelre, de Hollande et Westfrise, de Zelande, d'Utrecht, de Frise, d'Overijssel et de Groningue et Ommelandes, lesquels en vertu desdits pouvoirs sont convenu des articles suivants :

1. La paix retablie par le traité de Ryswick entre le Serenissime et Tres Puissant Prince Guillaume 3^e roy de la Grande Bretagne, le Serenissime et Tres Puissant Prince Louis quatorzieme roy Tres Chrétien de France et de Navarre, et les Seigneurs Etats Generaux des Provinces Unies des Païs Bas, leurs heritiers et successeurs, leurs royaumes, etats, et sujets, sera ferme et constante, et leurs majestés et lesdits Seigneurs Etats Generaux feront reciproquement tout ce qui pourra contribuer à l'avantage et à l'utilité de l'un et de l'autre.

2. Comme le principal objet, que sadite Majesté de la Grande Bretagne, sadite Majesté tres Chretienne, et lesdits Seigneurs Etats Generaux se proposent est celuy de maintenir la tranquillité generale de l'Europe, ils n'ont pu voir sans douleur, que l'état de la santé du Roy d'Espagne soit depuis quelque temps devenu si languissant, qu'il y a tout lieu de craindre que ce prince n'ait plus long temps à vivre. Quoyqu'ils ne puissent tourner leurs pensées du costé de cet evenement sans affliction, par l'amitié sincere et veritable qu'ils ont pour luy, ils ont cependant estimé qu'il estoit d'autant plus necessaire de le prévoir, que sa Majesté Catholique n'ayant point d'enfans, l'ouverture de sa succession exciteroit infalliblement une nouvelle guerre, si le Roy Tres Chretien soutenoit ses pretentions ou celles de Monseigneur le Dauphin, sur toute la succession d'Espagne ; Que l'Empereur fit aussy valoir ses prétentions ou celles du Roy des Romains, de l'archiduc son second fils, ou de ses autres enfants, et l'Electeur de Baviere, celles du Prince Electoral son fils aîné sur ladite succession.

3. Et comme les deux Seigneurs Rois et les Seigneurs Etats Generaux desirerent sur toutes choses, la conservation du repos public et d'éviter une nouvelle guerre dans l'Europe, par une accommodement des disputes et des differends, qui pourroient resulter au sujet de ladite succession, ou par l'ombrage de trop d'estats reunis sous un même prince, ils ont trouvé bon de prendre par avance des mesures necessaires pour prevenir les malheurs que le triste evenement de la mort du Roy Catholique sans enfans pourroit produire.

4. Ainsy a été accordé que si ledit cas arrivoit le Roy Tres Chretien tant en son propre nom qu'en celui de Monseigneur le Dauphin, ses enfans masles ou femelles, heritiers et successeurs, nés et à naitre, comme aussy mondit Seigneur le Dauphin pour soy-meme, ses enfans masles ou femelles, heritiers et successeurs nés et à naitre, se tiendront satisfaits, comme ils se tiennent satisfaits par la presente, que mondit Seigneur le Dauphin ait pour son part-

age en toute propriété, possession pleniére et extinction de toutes ses prétentions sur la succession d'Espagne pour en jouir luy, ses heritiers et successeurs nés et à naître, a perpetuité, sans pouvoir être jamais troublé sous quelque pretexte que ce soit de droits ou de prétentions directement ou indirectement, même par cession, appel, revolte ou autre voye de la part de l'Empereur, du Roy des Romains, de l'Archiduc Charles son second fils, de ses autres enfans masles ou femelles, et descendans, ses heritiers et successeurs nés et à naître, ny aussy de la part de l'Electeur de Baviere, au nom du Prince Electoral de Baviere, son fils aîné, ny dudit Prince Electoral, leurs enfans, descendans, heritiers, et successeurs, nés et à naître, les royaumes de Naples et de Sicile, les places dependantes presentement de la monarchie d'Espagne situées sur la coste de Toscane ou isles adjacentes, comprises sous le nom de Santo Stephano, Porto-Hercule, Orbitello, Telamone, Porto-Longon, Piombin, en la maniere que les Espagnols les tiennent presentement, la ville et le marquisat de Final, en la maniere pareillement que les Espagnols les tiennent; la province de Guipuscoa, nommement, les villes de Fontarabie et St. Sebastien, situées dans cette province, et specialement, le port du Passage qui y est compris, avec cette restriction seulement, que s'il y a quelques lieux dependans de la dite province, qui se trouvent situés au dela des Pirenées, ou autres montagnes de Navare, d'Alava ou de Biscaye du coté de l'Espagne, ils resteront à l'Espagne, et s'il y a quelques lieux pareillement dependants des provinces soumises à l'Espagne, qui soient en deça des Pirenées ou autres montagnes de Navare, d'Alava ou de Biscaye, du costé de la province de Guipuscoa, ils resteront à la France, et les trajets des dites montagnes et les dites montagnes qui se trouveront entre ladite province de Guipuscoa, Navare, Alava et Biscaye à qui qu'elles appartiennent, seront partagées entre la France et l'Espagne en sorte qu'il restera autant desdites montagnes et trajets à la France de son coté, qu'il en restera à l'Espagne du sien, le tout, avec les fortifications, munitions de guerre, poudres, boulets, canons, galeres, chiourmes, qui se trouveront appartenir au Roy d'Espagne, lors de son deceds sans enfans, et estre attachés aux royaumes, places, isles, et provinces qui doivent composer le partage de Monseigneur le Dauphin, bien entendu que les galeres, chiourmes, et autres effets, appartenants au Roy d'Espagne, par le royaume d'Espagne et autres estats, qui tombent dans le partage du Prince Electoral de Baviere luy resteront, celles qui appartiennent aux Royaumes de Naples et de Sicile devant revenir à Monseigneur le Dauphin, ainsy qu'il a été dit cy-dessus; moyennant lesquels royaumes, isles, provinces et places, le dit Roy Tres Chrétien, tant en son propre nom, qu'en celuy de Monseigneur le Dauphin, ses enfans masles ou femelles, heritiers et successeurs, nés et à naître (lequel a aussy donné son plein pouvoir pour set effet au Sieur Comte de Tallard) promettent et s'engagent de renoncer lors de la dite succession d'Espagne, comme en ce cas la, ils renoncent dès a present par celle-cy, a tous ses droits et prétentions sur ladite couronne d'Espagne, et sur les autres royaumes, isles, estats, pays et places qui en dependent presentement, et que de tout cela ils feront depecher des actes solempnels dans la plus forte et la meilleure forme qui se pourra, qui seront delivrés au temps de la ratification de ce traité.

5. Ladite couronne d'Espagne et les autres royaumes, isles, estats, pays et places, qui en dependent presentement, seront donnés et assignés (a l'exception de ce qui a été denoncé dans l'article precedent, qui doit composer le partage de Monseigneur le Dauphin) au prince, fils aîné de l'Electeur de Baviere, en toute propriete et possession pleniére en partage et extinction de toutes ses

pretentions sur ladite succession d'Espagne, pour en jouir, luy ses heritiers et successeurs, nés et à naître, a perpetuité, sans pouvoir estre jamais troublé, sous quelque pretexte que ce soit, de droits ou de pretentions, directement ou indirectement, même par cession, appel, revolte, ou autre voye, de la part de Roy Tres Chrétien, de mondit Seigneur le Dauphin ou ses enfans masles ou femelles, et descendants, ses heritiers et successeurs, nés ou à naître, ny de la part de l'Empereur, du Roy des Romains, de l'Archiduc Charles son second fils, de ses autres enfans, masles ou femelles et descendants, ses heritiers, et successeurs, nes et à naître; moyennant laquelle couronne d'Espagne, et les autres royaumes, isles, etats, pais et places, qui en dependent, l'Electeur de Baviere, tant en qualité de legitime tuteur et administrateur du Prince Electoral, son fils aîné, qu'au nom dudit Prince Electoral, qu'en celuy de leurs enfans, heritiers et successeurs, nés et à naître, comme aussy ledit Prince Electoral de Baviere dès qu'il sera majeur, pour soy-mesme, ses enfans, heritiers, et successeurs, nés et à naître, se tiendront satisfaits, que ledit Prince Electoral ait pour son partage la cession faite cydessus dans ce même article; et ledit Electeur de Baviere, tant en qualité de pere et de legitime tuteur et administrateur du Prince Electoral son fils aîné, qu'au nom dudit Prince, et qu'en celuy de ses enfans, heritiers et successeurs, nés et à naître, renoncera lors du decès de sa Majesté Catholique, et ledit Prince Electoral dès qu'il sera majeur, à tous droits et pretentions sur la portion assignée à Monseigneur le Dauphin, et sur celle qui doit estre assignée à l'Archiduc Charles dans l'article suivant, et que de tout cela, ils feront depecher les actes solempnels, dans la plus forte et la meilleure forme qui se pourra, à scavoir l'Electeur de Baviere dans la qualité cy-dessus dite, lors du decès de Sa Majesté Catholique sans enfans, et le dit Prince Electoral, dès qu'il sera majeur.

6. On exceptera toutefois encore desdites cessions et assignations le duché de Milan, que les deux Seigneurs Rois et les Seigneurs Estatz Generaux sont convenus devoir estre donné à l'Archiduc Charles d'Autriche, second fils du Serenissime et Tres Puissant Prince Leopold, eleu Empereur des Romains, en partage et extinction de toutes les pretentions et droits, que ledit Empereur, le Roy des Romains, l'Archiduc Charles, son second fils, tous ses autres enfans, masles ou femelles, et descendants, ses successeurs et heritiers, nés et à naître, pourroient avoir sur ladite succession d'Espagne, lequel archiduc aura en toute propriété et possession pleniere, ledit duché de Milan, pour luy, ses heritiers et successeurs, nés et à naître, pour aussy en jouir à perpetuité, sans pouvoir être jamais troublé, sous quelque pretexte que ce soit, de droits ou de pretentions, directement ou indirectement, de la part du Roy Tres Chrétien, et de mon dit Seigneur le Dauphin, ou des princes ses enfans et descendants, ses heritiers et successeurs, nés et à naître, ny aussy de la part de l'Electeur de Baviere, au nom du Prince Electoral, son fils aîné, ny dudit Prince Electoral, leurs enfans, descendants, heritiers et successeurs, nés et à naître.

7. Moyennant lequel duché de Milan, l'Empereur aussy, tant en son propre nom, qu'en celuy du Roy des Romains, de l'Archiduc Charles son second fils, ses enfans masles ou femelles, leurs enfans, heritiers et successeurs, nés et à naître, comme aussy le Roy des Romains, et l'Archiduc Charles dès qu'il sera majeur, pour luy mesme, leurs enfans, heritiers et successeurs, nés et à naître, se tiendront satisfaits, que l'Archiduc Charles ait en extinction de toutes leurs pretentions sur la succession d'Espagne, la cession faite cydessus dudit duché de Milan, et ledit Empereur, tant en son propre nom, qu'en celuy

du Roy des Romains, de l'Archiduc Charles son second fils, ses enfants masles ou femelles, et les leurs, leurs heritiers et successeurs, comme aussi ledit Roy des Romains, en son propre nom, renonceront lors du deceds de sa Majesté Catholique, et l'Archiduc Charles dès qu'il sera majeur, à tous autres droits et pretentions sur ladite couronne d'Espagne, et sur les autres royaumes, isles, etats, pays et places, qui en dependent, qui composent les partages et les portions assignés cy dessus à Monseigneur le Dauphin et au Prince Electoral de Bavière, et que de tout cela, ils feront depecher des actes solemnels, dans la plus forte et la meilleure forme qu'il se pourra, scavoir l'Empereur et le Roy des Romains lors du deceds de sa Majesté Catholique sans enfants, et l'Archiduc Charles dès qu'il sera majeur.

8. Le present traitté sera communiqué à l'Empereur et à l'Electeur de Baviere, par le Roy de la Grande Bretagne et les Seigneurs Etats Generaux, aussytost après la signature et l'échange des ratifications, et sa Majesté Imperiale, le Roy des Romains, et ledit Electeur seront invités de l'approuver lors du deceds du Roy d'Espagne sans enfants, et l'Archiduc Charles ainsy que le Prince Electoral des Bavières, dès qu'ils seront majeurs.

9. Que si l'Empereur, le Roy des Romains, ou l'Electeur de Baviere refusent d'y entrer, les deux Seigneurs Rois, et les Seigneurs Etats Generaux empecheront le prince, fils ou frere, de celuy qui refusera d'entrer en possession, de ce que luy sera assigné, et sa portion demeurera comme en sequestre, entre les mains des vice-rois, gouverneurs, et autres regents, qui y gouvernent de la part du Roy d'Espagne, lesquels ne pourront s'en desaisir, que du consentement des deux Seigneurs Rois et des Seigneurs Etats Generaux, jusques a ce qu'il aura agréé ledit partage et cette convention, et en cas que nonobstant cela, il voulut prendre possession de sa portion ou de celle qui sera assignée aux autres, les dits Seigneurs Rois, et lesdits Seigneurs Etats Generaux, comme aussy ceux qui se contenteront de leur partage en vertu de cette convention l'empecheront de toute leur force.

10. Le Roy d'Espagne venant à mourir sans enfants, et ainsy le susdit cas arrivant, les deux Seigneurs Rois et les Seigneurs Etats Generaux s'obligent de laisser toute la succession dans l'état comme alors elle se trouvera, sans s'en saisir, en tout ou en partie, directement ou indirectement ; mais chaque prince pourra d'abord se mettre en possession de ce que luy est assigné pour son partage, des qu'il aura satisfait de sa part aux articles cinq, six, sept et neuvieme precedants celuy-cy, et s'il y trouve de la difficulté, les deux Seigneurs Rois et les Seigneurs Etats Generaux feront tous leurs devoirs possibles, afin que chacun soit mis en possession de sa portion, selon cette convention, et qu'elle puisse avoir son entier effet, s'engageant a donner, par terre et par mer, les secours et assistances d'hommes et de vaisseaux necessaires pour contraindre par la force ceux qui s'opposeront a ladite execution.

11. Si lesdits deux Seigneurs Rois, et les Seigneurs Etats Generaux, ou quelqu'un d'eux sont attaquez de qui que ce soit, à cause de cette convention, où de l'exécution qu'on en fera, on s'assistera mutuellement l'un l'autre avec toutes ses forces, et on se rendra garand de la ponctuelle execution de ladite convention et des renonciations faites en conséquence.

12. Seront admis dans le present traitté tous rois, princes, et etats, qui voudront y entrer, et il sera permis auxdits deux Seigneurs Rois, et aux Seigneurs Etats Generaux, et à chacun d'eux en particulier de requerir et inviter tous ceux qu'ils trouveront bon de requerir et inviter, lesquels seront

semblablement garands de l'exécution de ce traité, et de la validité des renonciations qui y sont contenues.

13. Et pour assurer encore d'avantage le repos de l'Europe, les dits rois, princes, et états, seront non seulement garands de ladite exécution du present traité, et de la validité desdites renonciations comme cydessus; mais si quelqu'un des princes en faveur desquels les partages sont faits, vouloit dans la suite troubler l'ordre établi par ce traité, faire des nouvelles entreprises y contraires, et ainsy s'agrandir aux dépens des autres, sous quelque prétexte que ce soit, la même garantie du traité sera censée devoir s'étendre aussi en ce cas, en sorte que les rois, princes, et états, qui la promettent, seront tenus d'employer leurs forces, pour s'opposer auxdites entreprises, et pour maintenir toutes choses dans l'état convenu par lesdits articles.

14. Que si quelque prince que ce soit s'oppose à la prise de possession des partages convenus, lesdits deux Seigneurs Rois et les Seigneurs Etats Generaux seront obligés de s'entraider l'un l'autre contre cette opposition, et de l'empêcher avec toutes leurs forces, et l'on conviendra d'abord après la signature du present traité, de la proportion, que chacun doit contribuer tant par mer que par terre.

15. Le present traité sera ratifié et approuvé par lesdits deux Seigneurs Rois et les Seigneurs Etats Generaux, et les lettres de ratification seront échangées, dans le terme de trois semaines, ou plustost, si faire se peut, à compter du jour de la signature. Envoy de quoy nous avons signé le present, et mis le cachet de nos armes. Fait à la Haye l'onzième d'Octobre, mil six cent nonante huit. Estoit signé

PORTLAND.
WILLIAMSON.

CAMILLE D'HOSTUN.
Comte de TALLARD.

FRANCOIS VERBOLT.
F. B. DE REEDE.
A. HEINSIUS.
JOHAN BECKER.
J. VANDER DOES.
W. v. HAREN.
AR. LEMKER.
J. DE DREWS.

Et comme en explication des articles cinq, sept, et dix dudict traité, en même temps ait esté fait et signé l'article suivant.

Separate article.

En explication des articles cinq, sept, et dix, du traité passé à la Haye ce jourd'huy, on est convenu que quoique l'Archiduc Charles ne doive donner son acte de renonciation que quand il sera majeur, pourveu que l'Empereur et le Roy des Romains ayent donné les leurs, ledit Archiduc pourra entrer en possession de son partage lors du décès de sa Majesté Catholique sans enfants, quoique mineur, bien entendu que ledit Archiduc sera toujours obligé de donner son acte de renonciation quand il sera majeur. Et pareillement on est convenu que quoique le Prince Electoral de Bavière soit mineur, pourveu que l'Electeur de Bavière son pere, en qualité de pere, et de legitime tuteur et administrateur dudit Prince, ait donné le sien, ledit Prince Electoral de Bavière pourra entrer en possession de son partage lors du décès de sa Majesté Catholique sans enfants, quoique mineur, bien entendu que ledit Prince Electoral de Bavière sera toujours obligé de donner son acte de renon-

ciation dès qu'il sera majeur. En foy de quoy nous qui avons signe le traité, avons aussy signés ce present article, et mis le cachet de nos armes. Estoit signé

PORTLAND.
WILLIAMSON.

TALLARD.

FRANCOIS VERBOLT.
F. B. DE REEDE.
A. HEINSIUS.
JOHAN BECKER.
J. VANDER DOES.
W. v. HAREN.
AR. LEMKER.
J. DE DREWS.

Si est ce, qu'ayant veu et examiné ledit traité et article nous les avons agréée, approuvé, et ratifié, les aggreons, approuvons, et ratifions par ces presentes, promettant sincerement et de bonne foy, de les garder, entretenir, et observer inviolablement, selon leur forme et teneur, sans jamais aller ny venir au contraire, directement ou indirectement, en quelque sorte ou maniere que ce soit. En foy de quoy nous avons fait signer les presentes par le president de nostre assemblée, contre signer par nostre greffier, et y apposer nostre grand seau. Fait à la Haye le vingtcinquieme d'Octobre mil six cent nonante huict.

J. SMINIA v[idi]t.

Par ordonnance desdits Seigneurs
Estats Generaux.

J. FAGEL.

*Secret Article.*⁴³

Comme le Roy de la Grande Bretagne, le Roy Tres-Chretien, et les Seigneurs Etats Generaux des Provinces Unies des Pays Bas, sont convenus par le traité signé aujourd'huy, du partage qui devoit être fait de la succession du Roy d'Espagne, afin de prevenir les malheurs que le deceds de ce prince, s'il meurt sans enfans, pourroit produire dans l'Europe, et que la plus grande partie de la dite succession a été assignée au Prince Electoral de Bavière, sans qu'on ait déterminé à qui elle passeroit apres luy, s'il venoit pareillement à mourir sans enfans, sa Majesté Britannique, sa Majesté Tres Chretienne, et les Seigneurs Etats Generaux, pour eviter encore les contestations et les guerres, qu'un tel cas pourroit produire, sont convenus de nouveau par cet article secret, qui aura la mesme force, que le traité cy-dessus marqué, auquel il a rapport :

Premierement, que si le Roy d'Espagne vient a mourir sans enfans, et que par consequent, les royaumes d'Espagne, les Indes, isles, et autres pays et etats, qui sont assignés au Prince Electoral de Bavières, tombent en sa puissance, l'Electeur de Bavière d'a present sera tuteur et curateur du Prince son fils pendant sa minorité, durant laquelle il sera chargé du gouvernement et de l'administration de tous les royaumes, isles, etats, pays, et places, qui ont été assignez au prince son fils par le dit traité.

Et secondement, que si ledit prince venoit à mourir sans enfans, son Altesse Electorale de Baviere son pere luy succedera en tous les royaumes, isles, etats, pays, et places qui luy ont été assignés pour son partage, dont il jouira en toute propriété et pleine possession, luy et ses enfans, masles ou femelles,

⁴³ This article is included in the protocol, but not in the ratification.

descendants, successeurs et heritiers, nés et à naître, sans que l'Empereur, Monseigneur le Dauphin, leurs enfans mâles ou femelles, descendants, successeurs, heritiers ny aucun autre, puissent sous aucun pretexte former le moindre pretention sur cette succession, sa Majesté Britannique, sa Majesté Très-Chretienne et les Seigneurs Etats Generaux s'engageant de nouveau, d'employer toutes leurs forces par terre et par mer pour maintenir l'ordre qui est étably par cet article au sujet de la succession de la monarchie d'Espagne dont ils sont convenus unanimement, dans la veüe de procurer par cette prevoiance la continuation de la tranquillité generale, qui vient d'être retablie dans l'Europe.

Seront admis dans le present traitté, quand il sera rendu public par la mort du Prince Electoral en cas qu'elle arrive sans enfans, tous rois, princes, et etats qui voudront y entrer, et il sera permis aux dits deux Seigneurs Rois, et aux Seigneurs Etats Generaux et à chacun d'eux en particulier, de requerir et inviter tous ceux qu'ils trouveront bon de requerir et inviter, lesquels seront semblablement garands de ce qui est porté dans le present article secret ; En foy de quoy, nous qui avons signé le traitté, auquel le present article a rapport, avons aussy signé le present article, et y fait apposer le cachet de nos armes.

Fait à la Haye, l'onzieme d'Octobre 1698.

PORTLAND.

TALLARD.

WILLIAMSON.

Treaty of partition concluded by France and Great Britain at London, February 21, 1699/March 3, 1700, and by France and the States General at the Hague, March 14/25, 1700. Ratification by France, April 9, 1700, N. S. [Ratification by Great Britain, March 11/22, 1700.]

INTRODUCTION.

The death of the Electoral Prince of Bavaria on February 6, 1699, nullified the principal provision of the treaty of the Hague,¹ and reopened the question of the Spanish succession. William III. of England and his trusted adviser, Heinsius, the pensionary of Holland, regarded the event as a calamity.² They feared that the dying King of Spain, Charles II., would make a new will, naming as his heir, in place of the Bavarian prince, a Bourbon, or one of the Austrian Hapsburgs. They believed that the accession of a Bourbon would lead to French domination of Europe, the accession of an Austrian to immediate resumption of war by France. They desired a prince of little power, especially at sea, as ruler of Spain and of the Indies.³ They would have liked to put the Elector of Bavaria, father of the deceased prince, in the place of his son;⁴ and they claimed some basis for this substitution in the secret article of the treaty of the Hague providing that if the Electoral Prince should die without issue his father should succeed to his share of the Spanish dominions. The article, however, seemed to assume the accession of the prince;⁵ and, since the prince had not acceded, Louis XIV. denied the Elector's pretensions and proposed a new partitioning. By accepting the proposal William hoped to prevent war, and acquisition of the entire monarchy by France.

¹ Doc. 85.

² Krämer, *Archives*, sér. III., tom. II., pp. 302 ff.; Grimblot, *Letters*, II. 254, 260; Legrelle, *La Succession d'Espagne*, III. 6.

³ Louis XIV. pointed out to Tallard, in a letter of Feb. 23, 1699, that William III. would probably not "insist upon the proposal to substitute the King of Portugal for the Electoral Prince. The union of the dominions which the crowns of Spain and Portugal possess in the East and West Indies would give too much umbrage to the English and to the Dutch to allow it to be believed that the King of Great Britain will contribute to procure the crown of Spain for the King of Portugal. It would be giving him means easily to revenge himself for all that the Dutch have done to the prejudice of the Portuguese, in the East Indies and in the New World". Grimblot, *op. cit.*, II. 283; Legrelle, *op. cit.*, III. 25.

⁴ Krämer, *op. cit.*, sér. III., tom. II., pp. 302-306; Grimblot, *op. cit.*, II. 260, 280, 294, 303, 304; Legrelle, *op. cit.*, III. 22, 29, 30, 46.

⁵ See above, Doc. 85, p. 1.

Louis XIV. hoped to gain advantage from the death of the Electoral Prince, and to prevent the Austrian Hapsburgs from profiting disproportionately by it. On the one hand, he sought to strengthen the French party in Spain at the expense of the Imperialists there; on the other hand, he began negotiations with William III. directed toward restricting Austria's portion of the succession, and adding something to the share previously allotted to France.

In the latter part of February the French ambassador, Count Tallard, laid before William III. several proposals for partitioning the succession.⁶ The first divided the Spanish dominions between the two chief surviving claimants, assigning to the second son of the Emperor, the Archduke Charles, the portion allotted by the treaty of 1698 to the Electoral Prince of Bavaria—Spain, the Balearic Islands, Sardinia, places on the northern coast of Africa, the Indies, *i. e.*, Spanish America, and the Philippines; and to the Dauphin, the share allotted to him by the treaty of 1698 with the addition of Milan, *i. e.*, all of the Spanish possessions in Italy as well as the province of Guipúzcoa. An alternative proposal would give Milan to the Duke of Lorraine and the duchy of Lorraine to the Dauphin. Another suggestion included the assigning of the Archduke's share—Spain, her aforementioned islands and colonies—to the Duke of Savoy. William III. was surprised that Louis XIV. should consent that a son of the Emperor should become King of Spain.⁷ The King of England himself—so Portland told Tallard on March 5—regretted the assigning of Spain and the Indies to an Austrian Hapsburg prince, but felt that, “as there was no third candidate to whom the succession could be given, it was for the general interest that it should fall into the hands of the Archduke, rather than into those of a French prince; and that his dominions would be so separated from those which his house possesses in Germany, that there would be no reason to conceive too much jealousy”. At the same time Portland declared that while the partition treaty might properly be arranged between William and Louis prior to overtures to the Emperor, yet it must not be signed without the Emperor's acceptance of its provisions.⁸

By the third of April the main points of the treaty were agreed on. Spain, her aforesaid islands, Spanish America, the Philippines, and the Low Countries were to go to the Archduke Charles. The kingdoms of Naples and Sicily, the Spanish places on the coast of Tuscany, and the province of Guipúzcoa were assigned to the Dauphin, who, after transferring his rights to the duchy of Milan to the Duke of Lorraine, was to be put in possession of the duchies of Lorraine and Bar. Three months were to be allowed for persuading the Emperor to agree to these proposals.⁹

⁶ Grimblot, *op. cit.*, II. 273 ff.; Legrelle, *op. cit.*, III. 26 ff.

⁷ Krämer, *op. cit.*, sér. III., tom. II., p. 318; Grimblot, *op. cit.*, II. 278.

⁸ Legrelle, *op. cit.*, III. 47, 48; Grimblot, *op. cit.*, II. 304, 305.

⁹ Legrelle, *op. cit.*, III. 65-68; Reynald, *Louis XIV. et Guillaume III.*, I. 286-291. The period for delay became three and a half months in the *projet* of June 11, but was changed back to three months in the formal treaty.

Of the remaining points of difference the chief concerned the passing of the Archduke Charles into Spain. William III., wished him to be established at Madrid prior to the death of the King of Spain. Louis XIV., on the other hand, feared that unless precautions were taken in advance the continued presence of the archduke near the king would cause him to be regarded as future ruler of all of the Spanish states, any of which it would then be difficult to wrest from him.¹⁰ Fearing lest Charles II. should die before the conclusion of the treaty, and Louis XIV. should reap the fruit of French intrigues at the Spanish court—stripped, too, of his military forces by parliamentary action—William III. deemed it necessary to make concessions.¹¹ Louis XIV. was also conciliatory. On June 1/11 the *projet* was signed.¹² Among its provisions not already noticed were those for inducing the States General to concur in the formal treaty; for preventing the union of the Spanish with the imperial or French crowns; for guaranteeing the execution of the treaty; and for converting the *projet* into a solemn treaty between the two kings and the States General on September 15/25, 1699. The marquise of Final was added to the Dauphin's share.

Owing largely to the opposition of Amsterdam, many months passed before the States General would agree to adhere to the treaty; and not till then would Louis conclude the treaty with England. The instrument was finally signed by France and England at London, on February 21, 1699/March 3, 1700, and by France and the United Provinces at the Hague on March 14/25. Ratifications were exchanged at London on April 23, 1700.¹³

The treaty differed in a number of respects from the *projet* of June 11. Especially important was a new secret article, extending the time allowed for the Emperor's adhesion to two months after the King of Great Britain and the States General had been notified by France of the King of Spain's death; stipulating that if the Emperor failed to subscribe within that period the kings of France and Great Britain and the States General should choose a prince to succeed to the archduke's share; and providing that if the archduke should go into Spain or Milan without the common consent of the three signatories the King of Great Britain and the States General should act with France to compel Spain to send the archduke out.

In the interval between the signing of the *projet* and the signing of the treaty William III. and Heinsius, acting through the Dutch ambassador at the Viennese court, strove in vain to bring the Emperor to accept the principles of the *projet*. Refusing to be excluded from Italy, the Emperor declared himself ready to assign to the Dauphin Peru or Mexico, the Philippines, and the Antilles. The offer was doubtless made for the purpose of dividing France

¹⁰ Legrelle, *op. cit.*, III. 66-76, *passim*.

¹¹ *Ibid.*, pp. 76-84, *passim*; Grimblot, *op. cit.*, II. 324 ff.

¹² The text of the *projet* is in Legrelle, *op. cit.*, III. 669-682.

¹³ *Ibid.*, p. 252.

from the maritime powers, whose chief commercial interest was believed to lie in trade with the Indies.¹⁴

Immediately after the exchange of ratifications, in May, 1700, Louis XIV. also attempted to draw the Emperor into the treaty. Angered by the defection of the maritime powers, and by the contents of the ninth article, forbidding the transfer of the archduke's share at any future time to any emperor or king of the Romans, Leopold declared himself inclined to undertake separate negotiations with Louis XIV.¹⁵ The Emperor continued to prefer Italy to the Indies on the ground that Austria could not defend the Indies without a navy, and that therefore the archduke would always be at the mercy of England and Holland in those parts.¹⁶ His offers to France became increasingly liberal—at first the Indies, and finally Flanders, Luxemburg, Spain, places in Africa, Sardinia, and the entire Indies as well.¹⁷ France rejected these proposals. Leopold, on the other hand, encouraged doubtless by the fact that Spain was seeking his alliance, refused to adhere to the treaty.¹⁸

The dying King of Spain had protested to the signatory governments against the *projet* of partition.¹⁹ He, his council of state, and his people deeply resented the definitive treaty.²⁰ The clergy and people abhorred it largely because they believed a rumor—spread, it was said, by the imperialists—that a secret article allotted all or a part of Spain's colonies to the heretical maritime powers.²¹ The attempt of the Scots to colonize Darien seemed evidence that Britain aspired to control Central and South America.²²

Following his council's advice, Charles wrote to the Pope, Innocent XII., on June 14, 1700, declaring in substance that the allotment of the Indies to the English and Dutch, by another treaty, was undoubtedly to be inferred, partly from their participation in the present treaty and guaranty of its ob-

¹⁴ *Ibid.*, pp. 126, 131, 144; cf. pp. 265, 266. Writing to Heinsius on Aug. 16, 1699, William declared, "D'ordres, die Goesen Aversberg [representing the Emperor] hebben ontfangen, komen mij alleen voor als een defaite en om tijt te verliezen, alsmede oordeelende dat Engelandt en Hollandt meest aen de Indies gelegen zijn in't reguard van de commertie, ende dienvolgende meer sorgh daervoor sullen dragen als voor Italien". Krämer, *Archives*, sér. III., tom. II., p. 451, and in translation in Hardwicke, *Miscellaneous State Papers*, II. 376. There is some evidence that on June 20, 1699, the Austrian representative, Count Aversberg, communicated to William III. a *projet* of alliance providing that England and Holland, in certain specified ways, should aid the House of Austria to take possession of the kingdom of Spain and that in return the Austrian successor of Charles II. would cede to the English the Canaries, all of the Antilles and the adjacent islands, save Cuba, and to the Dutch all of Spain's possessions in the East Indies. Legrelle, *op. cit.*, III. 100-102.

¹⁵ *Ibid.*, pp. 271, 278, 279, 289 ff., 296, 298, 306.

¹⁶ *Ibid.*, pp. 269, 288.

¹⁷ *Ibid.*, pp. 277, 296-317, *passim*.

¹⁸ *Ibid.*, pp. 317 ff.

¹⁹ *Ibid.*, pp. 148 ff.

²⁰ *Ibid.*, pp. 346 ff.; cf. A. Stanhope, *Spain under Charles the Second*, p. 121.

²¹ Legrelle, *op. cit.*, III. 375 ff.; cf. especially the opinion of the Bishop of Saragossa, *ibid.*, pp. 707 ff.

²² *Ibid.*, pp. 707, 708. On the Darien expeditions see below, Doc. 92, Introduction. In the early spring of 1699 the French ambassador at Madrid urged the Spanish government to prevent the influx of the heretical English, Scots, and Dutch into the Indies, and instigated the papal nuncio at the Spanish capital to work for this end. Stanhope, *op. cit.*, p. 126.

servance; that his ministers advised him to name one of the younger sons of the Dauphin as his successor for the entire monarchy, and that, desiring the permanence of pure religion in all of his kingdoms, he offered to dispose of them in accordance with the will of the Pope.²³ The Pope's answer, received in Madrid at the end of July, advised Charles II. to ensure the integrity of the Spanish monarchy by naming one of the younger sons of the Dauphin as his successor.²⁴ The advice pleased the Spaniards.²⁵ Charles II.'s objections to disinherit his Austrian kinsmen were finally overcome, and on October 2, 1700, he made his will in favor of the Dauphin's second son, the Duke of Anjou.²⁶ The death of Charles II., on November 1, 1700, obliged Louis XIV. to make a fateful choice between keeping to the treaty of partition or breaking the treaty and accepting the King of Spain's will. It was argued in Louis's council of state, in favor of the latter alternative, that a union with Spain would enable France to profit from the Indies trade, and would give the two countries an identical interest in diminishing the commerce and colonial expansion of the English and Dutch in the Indies.²⁷ Louis XIV. accepted the will, and thereby was soon involved in war with Austria and the maritime powers.

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²³ The letter is printed in Legrelle, *op. cit.*, III. 355, 356.

²⁴ The Pope's letter is *ibid.*, pp. 373-375. Upon learning the tenor of the treaty from the French ambassador in Rome, about the middle of May, Innocent XII. had expressed his gratification that it did not concede the Indies to the heretical English and Dutch. "Il me témoigna ensuite", wrote the ambassador to Louis XIV., on May 24, 1700, "que sa consolation était parfaite, en ce que les Anglais et les Hollandais ne retireraient en leur particulier des États et des établissements que possède la Couronne d'Espagne aux Indes et à l'Amérique; que l'appréhension qu'il en avait eue lui avait fait passer de tristes et de fâcheux quarts d'heure, et que, comme il y aurait eu des millions d'âmes des fidèles intéressées en ce pays-là à un tel délaissement, il ne les aurait pu savoir exposées au danger de leur salut sans en pleurer des larmes de sang." Legrelle, *op. cit.*, III. 558.

²⁵ *Ibid.*, pp. 376 ff.

²⁶ The will is published by Legrelle, *op. cit.*, III. 712-737.

²⁷ *Mémoires de Saint-Simon* (ed. A. de Boislisle), VII. 299-303; cf. Legrelle, *op. cit.*, IV. 27-29.

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TEXT.²⁸

Louis, par la grace de Dieu roy de France et de Navarre, A tous ceux qui ces presentes lettres verront, salut. Ayant veu et examiné le traitté qui a esté conclu, arrêté et signé en nostre nom sçavoir a Londres le troisiemes jour de Mars dernier par nostre cher et bien amé le Sieur Comte de Tallard, lieutenant general de nos armées et de notre province de Dauphiné et nostre ambassadeur extraordinaire en Angleterre, en vertu du plein pouvoir que nous luy en avons donné, avec le Sieur Guillaume comte de Portland, vicomte de Cirencester, baron de Wodstock, chevalier de l'ordre de la Jaretière et conseiller de nostre tres cher et bien amé frere le Roy de la Grande Bretagne en son conseil privé, et le Sieur Edward comte de Jersey, vicomte Villiers, baron de Hoo, chevalier, mareschal d'Angleterre, premier secretaire d'estat et conseiller de nostre dit frere le Roy d'Angleterre en son conseil privé, pareillement munis d'un plein pouvoir de sa part ; Et a la Haye le vingt cinquiemes dudit mois de Mars ensuivant par nostre cher et bien amé le sieur Comte de Briord conseiller en nos conseils et nostre ambassadeur extraordinaire aupres de nos tres chers et grands amis les Estats Generaux des Provinces Unies des Pays Bas, aussy en vertu du plein pouvoir que nous luy en avons donné, avec les Sieurs Jean Van Essen, bourgmestre et senateur de la ville de Zutphen, curateur de l'université a Harderwich, Fredericq, baron de Rheede, seigneur de Lier, St. Antoine, Terlée etca., de l'ordre de la noblesse de Hollande et Westfrise ; Antoine Heinsius, conseiller pensionnaire, garde du grand sceau et surintendant de la mesme province ; Guillaume de Nassau, seigneur d'Odick, Cortgiene etc. premier noble et representant la noblesse dans l'assemblée des Estats et de deputez conseillers de Zeelande ; Everhard de Weede, seigneur de Weede, Dickvelt, Rateles etc., seigneur foncier de la ville d'Oudewater, doyen et escolatre du chapitre imperial de Ste. Marie a Utrecht, dickgrave de la riviere du Rhin dans la province d'Utrecht et president des Estats de la mesme province ; Guillaume Van Haren, grietman du Bilt, député de la noblesse aux Estats de Frise et curateur de l'université de Franeker ; Arnold Lemker, bourgmestre de la ville de Deventer, et Jean Vanheeck, senateur de la ville de Groninguen, tous deputez dans l'assemblée desdits Estats Generaux de la part des Estats de Guelders, du Hollande et Westfrise, de Zeelande, d'Utreck, de Frize, d'Overissel, et de Groningue et Omelandes, aussy pareillement munis de pleins pouvoirs de la part desdits Estats Generaux des Provinces Unies des Pays Bas, duquel traitté la teneur s'ensuit.

Soit notoire a tous qui ces presentes verront que le Serenissime et Tres Puissant prince Louis Quatorze par la grace de Dieu Roy Tres Chretien de France et de Navarre, et le Serenissime et Tres Puissant prince Guillaume Trois aussy par la grace de Dieu Roy de la Grande Bretagne, et les Seigneurs Estats Generaux des Provinces Unies des Pays Bas, n'ayant rien de plus a coeur que de fortifier par de nouvelles liaisons la bonne intelligence restablie entre sa Majesté Tres Chretienne, sa Majesté de la Grande Bretagne, et lesdits Seigneurs Estats Generaux par le dernier traitté conclu a Ryswick, et de prevenir par des mesures prises a temps les evenemens qui pouvoient exciter de nouvelles guerres dans l'Europe, ont donné pour cet effect leurs pleins pouvoirs pour convenir d'un nouveau traitté, Sçavoir sadite Majesté Tres Chretienne au Sieur Camille d'Hostung, comte de Tallard, lieutenant general

²⁸ The text is from the original of the ratification by France, preserved in the London P. R. O., St. Pap. For., Treaties, no. 69.

des armées du Roy et de sa province de Dauphiné, ambassadeur extraordinaire de France en Angleterre, et au Sieur Gabriel comte de Briord, marquis de Senosan, conseiller du Roy en tous ses conseils et son ambassadeur extraordinaire aupres desdits Seigneurs Estats Generaux des Provinces Unies des Pays Bas; sadite Majesté Britannique au Sieur Guillaume comte de Portland, viconte de Cirencester, baron de Woodistock, chevalier de l'ordre de la Jarretiere et conseiller du Roy en son conseil privé, et au Sieur Edward comte de Jersey, viconte Villiers, baron de Hoo, chevalier mareschal d'Angleterre, premier secretaire d'Estat et conseiller du Roy en son conseil privé. Et lesdits Seigneurs Estats Generaux aux Sieurs Jean Van Essen, bourguemaistre et senateur de la ville de Zutphen, curateur de l'université a Harderwyck, Frederick baron de Rheede, seigneur de Lier, St. Antoine, Terlee etc. de l'ordre de la noblesse de Hollande et Westfrise, Antoine Heinsius, conseiller pensionnaire, garde du grand sceau et surintendant des fiefs de la mesme province, Guillaume de Nassau, seigneur d'Odyck, Cortgiene etca. premier noble et representant la noblesse dans l'assemblée des Estats et deputéz conseillers de Zeelande, Everhard de Weede, seigneur de Weede, Dyckvelt, Rateles, etc. seigneur foncier de la ville d'Oudewater, doyen et escolatre du chapitre imperial de Ste. Marie a Utrecht, dyckgrave de la riviere du Rhin dans la province d'Utrecht, et president des estats de la mesme province, Guillaume Van Haren, grietman du Bilt, député de la noblesse aux Estats de Frise et curateur de l'université de Franequer, Arnold Lemker, bourguemaistre de la ville de Deventer, et Jean Van Heeck, senateur de la ville de Groninguen, tous deputez dans l'assemblée desdits Seigneurs Estats Generaux de la part des Estats de Gueldre, de Hollande et Westfrise, de Zeelande, d'Utrecht, de Frise, d'Owerissel, et de Groningue et Ommelandes; lesquels en vertu desdits pouvoirs sont convenus des articles suivants.

1. La paix restablie par le traitté de Ryswick entre sa Majesté Tres Chrestienne et sa Majesté Britannique et les Seigneurs Estats Generaux des provinces Unies des Pays Bas, leurs heritiers et successeurs, leurs royaumes, estats et sujets, sera ferme et constante et leurs Majestez et lesdits Seigneurs Estats Generaux feront reciproquement tout ce qui pourra contribuer a l'avantage et a l'utilité de l'un et l'autre.

2. Comme le principal objet que sadite Majesté Tres Chrestienne et sadite Majesté de la Grande Bretagne, et lesdits Seigneurs Estats Generaux se proposent est celui de maintenir la tranquillité generale de l'Europe ils n'ont pu voir sans douleur que l'estat de la santé du Roy d'Espagne, soit depuis quelque temps devenu si languissant qu'il y a tout a craindre pour la vie de ce prince, quoy qu'ils ne puissent tourner leur pensée du coste de cet evenement sans affliction par l'amitié sincere et veritable qu'ils ont pour luy, ils ont cependant estimé qu'il estoit d'autant plus necessaire de le prévoir, que sa Majesté Catholique n'ayant point d'enfans, l'ouverture de la succession exciteroit infailliblement une nouvelle guerre, si le Roy Tres Chrestienne soutenoit ses pretentions, celles de Monseigneur le Dauphin ou de ses descendans sur toute la succession d'Espagne et que l'Empereur voulut aussy faire valoir ses pretentions, celles du Roy des Romains, de l'archiduc son second fils ou de ses autres enfans masles ou femelles sur la dite succession.

3. Et comme les deux Seigneurs Roys et les Seigneurs Estats Generaux desirent sur toutes choses la conservation du repos public et deviter une nouvelle guerre dans l'Europe par un accommodement des disputes et des differens qui pouvoient resulter au sujet de la dite succession, ou par l'ombrage de trop d'estats reunies sous un mesme prince, ils ont trouvé bon de prendre par

avance des mesures necessaires pour prevenir les malheurs que le triste evenement de la mort du Roy Catholique sans enfans pouvoit produire.

4. Ainsy a esté accordé et convenu que si le susdit cas arrivoit, le Roy Tres Chrestien, tant en son propre nom qu'en celuy de Monseigneur le Dauphin, ses enfans masles ou femelles, heritiers et successeurs, nez et a naistre, comm'aussy mondit Seigneur le Dauphin pour soy mesme, ses enfans masles ou femelles, heritiers et successeurs, nez et a naistre, se tiendront satisfaits comme ils se tiennent satisfaits par la presente, que mondit seigneur le Dauphin ait pour son partage en toute propriété, possession pleniere et extinction de toutes ses pretentions sur la succession d'Espagne pour en jouir, luy, ses heritiers, successeurs, descendans, masles ou femelles, nez et a naistre, a perpetuité sans pouvoir estre jamais troublé sous quelque pretexte que ce soit de droits ou de pretentions directement ou indirectement, mesme par cession, appel, revolte, ou autres voye, de la part de l'Empereur, du Roy des Romains, du Serenissime Archiduc Charles son second fils, des archiduchesses, de ses autres enfans masles ou femelles, et descendans, ses heritiers et successeurs, nez et a naistre, les royaumes de Naples et de Sicile en la manière que les Espagnols les possèdent presentement, les places dependantes de la monarchie d'Espagne scituées sur la coste de Toscane, ou isles adjacentes, comprises sous le nom de Sancto Stephano, Portohercole, Orbitello, Telamone, Portolongon, Piombin, en la maniere aussy que les Espagnols les tiennent presentement, la ville et le marquisat de Final en la maniere pareillement que les Espagnols les tiennent, la province de Guipuscoa, nommement les villes de Fontarabie et St. Sebastian scituées dans cette province, et specialement le port du Passage qui y est compris, avec cette restriction seulement que s'il y a quelques lieux dependans de la dite province qui se trouvent scituez au dela des Pyrenées ou autres montagnes de Navarre, d'Alava, ou de Biscaye du costé de l'Espagne ils resteront a l'Espagne, et s'il y a quelques lieux pareillement dependans des provinces soumises a l'Espagne qui soient en deça des Pyrenées, ou autres montagnes de Navarre, d'Alava, ou de Biscaye du costé de la province de Guipuscoa ils resteront a la France, et les trajets desdites montagnes, et lesdites montagnes que se trouveront entre ladite province de Guipuscoa, Navarre, Alava, et de Biscaye a qui quelles appartiennent seront partagées entre la France et l'Espagne, en sorte qu'il restera autant desdites montagnes et trajets a la France de son costé, qu'il en restera a l'Espagne du sien, le tout avec les fortifications, munitions de guerre, poudres, boulets, canons, galeres, chiourmes, qui se trouveront appartenir au Roy d'Espagne lors de son deceds sans enfans et estre attachez aux royaumes, places, isles, et provinces qui doivent composer le partage de Monseigneur le Dauphin, bien entendu que les galeres, chiourmes, et autres effects appartenans au Roy d'Espagne par le royaume d'Espagne et autres estats qui tombent dans le partage du Serenissime Archiduc luy resteront, celles qui appartiennent aux royaumes de Naples et de Sicile devant revenir a Monseigneur le Dauphin ainsy qu'il a esté dit cy dessus; De plus les estats de Mr. le Duc de Lorraine, a sçavoir les duches de Lorraine et de Barr, ainsy que le Duc Charles Quatriesme du nom les possedoit et tels qu'ils ont esté rendus par le traité de Ryswick, seront cedez et transportez a Monseigneur le Dauphin, ses enfans, heritiers, et successeurs, masles ou femelles, nez et a naistre, en toute propriete et possession pleniere a la place du duché de Milan qui sera cedde et transporté en echange audit Duc de Lorraine, ses enfans masles ou femelles, heritiers, descendans, successeurs, nez et a naistre, en toute propriété et possession pleniere (lequel ne refusera pas un party si avantageux) bien entendu que le Comté de Bistch appartient a Mr. le Prince de

Vaudemont, lequel rentrera dans la possession des terres dont il a jouy cy devant qui luy ont esté ou dever estre rendues en execution du traité de Ryswick, moyennant lesquels royaumes, isles, provinces, et places ledit Roy Tres Chrestien tant en son propre nom qu'en celuy de Monseigneur le Dauphin, ses enfans masles ou femelles, heritiers et successeurs, nez et a naistre, comm'aussy mondit Seigneur le Dauphin pour soy mesme, ses enfans masles ou femelles, heritiers, et successeurs, nez et a naistre (lequel a aussy donné son plein pouvoir pour cet effect au Sieur Comte de Tallard et au Sieur Comte de Briord) promettent et s'engagent de renoncer lors de l'ouverture de ladite succession d'Espagne, comme en ce cas la ils renoncent des a present par celle cy a tous ses droits et pretentions sur ladite couronne d'Espagne et sur tous les autres royaumes, isles, estats, pays, et places qui en dependent presentement, a l'exception de ce qui est enoncé cy dessus pour son partage, et de tout cela ils feront expedier des actes solempnels dans la plus forte et la meilleure forme qu'il se pourra, qui seront delivrez au temps de l'échange des ratifications de ce present traité au Roy de la Grande Bretagne et aux Seigneurs Estats Generaux.

[5. Places within the share assigned to the Dauphin are not to be demolished.]

6. Ladite couronne d'Espagne et les autres royaumes, isles, estats, pays, et places que le Roy Catholique possede presentement tant dehors que dedans l'Europe seront donnez et assignez au Serenissime Archiduc Charles second fils de l'Empereur (a l'exception de ce qui a esté enoncé dans l'article quatre qui doit composer le partage de Monseigneur le Dauphin et du duché de Milan, en conformité dudit article quatre) en toute propriété et possession pleniére en partage et extinction de toutes ses pretentions sur ladite succession d'Espagne, pour en jouir, luy, ses heritiers et successeurs, nez et a naistre, a perpetuité, sans estre jamais troublé sous quelque pretexte que ce soit de droits ou de pretentions directement ou indirectement mesme par cession, appel, revolte, ou autre voye, de la part du Roy Tres Chretien, de mondit Seigneur le Dauphin, ou de ses enfans masles ou femelles, ses heritiers et successeurs, nez et a naistre, moyennant laquelle couronne d'Espagne et autres royaumes, isles, estats, pays et places qui en dependent l'Empereur tant en son propre nom qu'en celuy du Roy des Romains, du Serenissime Archiduc Charles son second fils, des archiduchesses ses filles, ses enfans, leurs enfans masles ou femelles, heritiers, descendans, ou successeurs, nez et a naistre, comm'aussy le Roy des Romains pour luy et le Serenissime Archiduc Charles des qu'il sera majeur, pour luy mesme, leurs enfans, heritiers et successeurs, masles ou femelles, nez et a naistre, se tiendront satisfaits que ledit Serenissime Archiduc Charles ait en extinction de toutes leurs pretentions sur la succession d'Espagne, ladite cession faite cy dessus, et ledit Empereur tant en son propre nom qu'en celuy du Roy des Romains, du Serenissime Archiduc Charles son second fils, des archiduchesses ses filles, ses enfans masles ou femelles et les leurs, leurs heritiers et successeurs, comm'aussy ledit Roy des Romains en son propre nom, renonceront lors qu'ils entreront en ce present traité et qu'ils le ratifieront, et le Serenissime Archiduc Charles des qu'il sera majeur, a tous autres droits et pretentions sur les royaumes, isles, estats, pays, et places qui composent les partages et les portions assignés cy dessus a Monseigneur le Dauphin, de celuy qui aura le duché de Milan par échange de ce qui sera donné a mondit Seigneur le Dauphin, et que de tout cela ils feront expedier des actes solempnels dans la plus forte et la meilleure forme qu'il se pourra, Sçavoir l'Empereur et le Roy des Romains quand ils ratifieront ce

present traité et le Serenissime Archiduc des qu'il sera majeur, lesquels seront delivrez a sa Majesté Britannique et aux Seigneurs Estats Generaux.

7. Immediatement apres l'echange des ratifications de ce present traité, il sera communiqué a l'Empereur, lequel sera invité d'y entrer, mais si trois mois apres, a compter du jour de ladite communication et de ladite invitation, ou le jour que Sa Majesté Catholique viendrait a mourir si c'estoit avant ledit terme de trois mois, sa Majesté Imperiale et le Roy des Romains refusoient d'y entrer, et de convenir du partage assigné au Serenissime Archiduc, les deux Seigneurs Roys ou leurs successeurs et les Seigneurs Estats Generaux conviendront d'un prince auquel ledit partage sera donné, et en cas que non obstant la presente convention ledit Serenissime Archiduc voulust prendre possession ou de la portion qui luy sera echeüe avant qu'il eust accepté le present traité, ou de celle qui seroit assignée a Monseigneur le Dauphin ou a celuy qui aura le duché de Milan par echange comme il est dit cy dessus, lesdits deux Seigneurs Roys et les Seigneurs Estats Generaux en vertu de cette convention l'empescheront de toutes leurs forces.

[8. The archduke was not to pass into Spain or Milan during the life of the King of Spain except by common consent.]

9. Si le Serenissime Archiduc vient a mourir sans enfans soit avant ou apres la mort du Roy Catholique le partage qui luy est assigné cy dessus par l'article six de ce traité passera a tel enfant de l'Empereur masle ou femelle hors le Roy des Romains, ou tel enfans masle ou femelle du Roy des Romains, que sa Majesté Imperiale trouvera bon de designer, et en cas que sadite Majesté Imperiale vint a deceder sans avoir fait la susdite designation, elle pourra estre faite par le Roy des Romains, mais le tout a condition que ledit partage ne pourra jamais estre reuny ny demeurer en la personne de celuy qui sera Empereur ou Roy des Romains, ou qui sera devenu l'un ou l'autre soit par succession, testament, contract de mariage, donation, eschange, cession, appel, revolte, ou autre voye, et de mesme ledit partage du Serenissime Archiduc ne pourra jamais revenir ny demeurer en la personne d'un prince qui sera roy de France ou dauphin, ou qui sera devenu l'un ou l'autre, soit par succession, testament, contract de mariage, donation, eschange, cession, appel, revolte, ou autre voye.

10. Le Roy d'Espagne venant a mourir sans enfans, et ainsy le susdit cas arrivant, les deux Seigneurs Roys et les Seigneurs Estats Generaux s'obligent de laisser toute la succession dans l'estat comme alors elle se trouvera sans s'en saisir en tout ou en partie directement ou indirectement, mais chaque prince pourra d'abord se mettre en possession de ce qui luy est assigné pour son partage des qu'il aura satisfait de sa part aux articles quatre et six precedans celuy cy, et s'il y trouve de la difficulté les deux Seigneurs Roys et les Seigneurs Estats Generaux feront tous leurs devoirs possibles afin que chacun soit mis en possession de sa portion selon cette convention, [1]aquelle puisse avoir son entier effect, s'engageant a donner par terre et par mer les secours et assistances d'hommes et de vaisseaux necessaires pour contraindre par la force ceux qui s'opposeront a ladite execution.

11. Si lesdits Seigneurs Roys ou les Seigneurs Estats Generaux ou quelqu'un d'eux sont attaquez de qui que ce soit a cause de cette convention ou de l'execution qu'on en fera, on s'assistera mutuellement l'un l'autre avec toutes ses forces, et on se rendra garant de la ponctuelle execution de ladite convention et des renonciations faites en consequence.

12. Seront admis dans le present traité, tous roys, princes, et estats qui voudront y entrer et il sera permis auxdits deux Seigneurs Roys et aux Seigneurs Estats Generaux et a chacun d'eux en particulier de requérir et

inviter tous ceux qu'ils trouveront bon de requerir et inviter, d'entrer dans ce present traité, et d'estre semblablement garants de l'execution de ce traité et de la validité des renonciations qui y sont contenues.

13. Et pour assurer encores d'avantage le repos de l'Europe, lesdits roys, princes, et estats seront non seulement invitez d'estre garands de ladite execution du present traite et de la validité desdits renonciations comme cy dessus, mais si quelqu'un des princes en faveur desquels les partages sont faits, vouloit dans la suite troubler l'ordre estably par ce traité, faire de nouvelles entreprises y contraires, et ainsy s'agrandir aux depens les uns des autres sous quelque pretexte que ce soit, la mesme garantie du traite sera sensée devoir s'estendre aussy en ce cas, en sorte que les roys, princes, et estats qui la promettent seront tenus d'employer leurs forces pour s'opposer auxdites entreprises, et pour maintenir toutes choses dans l'estat convenu par lesdits articles.

14. Que si quelque prince que ce soit s'oppose a la prise de possession des partages convenus, lesdits deux Seigneurs Roys et les Seigneurs Estats Generaux seront obligez de s'entrayder l'un l'autre contre cette opposition, et de l'empescher avec toutes leurs forces, et l'on conviendra d'abord apres la signature du present traité de la proportion que chacun doit contribuer tant par mer que par terre.

15. Le present traité et tous les actes faits en consequence ou qui y ont rapport, et nommement les actes solennels que sa Majesté Tres Chrestienne et Monseigneur le Dauphin sont obligez de donner en vertu de l'article quatre cy dessus, seront enregistrez au Parlement de Paris suivant leur forme et teneur, et l'usage ordinaire pour avoir lieu aux conditions qui y sont portées des que l'Empereur sera entré dans le present traité ou au bout de trois mois qui luy sont donnez pour cet effect, s'il ny entre pas plustost, et pareillement sa Majesté Imperiale sera tenue quand elle entrera dans le present traité de le faire approuver et enregistrer avec tous les actes faits en consequence, ou qui y ont rapport, nommement les actes solennels que sa Majesté Imperiale, le Roy des Romains, et le Serenissime Archiduc seront obligez de donner en vertu de l'article six cy dessus, en son conseil d'Estat ou ailleurs suivant les formes les plus autentiques du pays.

16. Les ratifications des deux Seigneurs Roys et des Seigneurs Estats Generaux seront toutes trois eschangées en mesme temps a Londres dans l'espace de trois semaines a compter du jour que lesdits Seigneurs Estats Generaux auront signé et plustost si faire se peut. Fait et signé a Londres le troisieme Mars nouveau stile mil sept cens, vingt uniesme de Fevrier vieux stile mil six cens nonante et neuf, par nous plenipotentiaires de France et d'Angleterre, et a la Haye le vingt cinquiesme dudit mois de Mars mil sept cens par nous plenipotentiaires de France et des Seigneurs Estats Generaux, les deux seigneurs Roys et lesdits Seigneurs Estats Generaux estant convenus que la signature de ce present traité se feroit de la sorte. En foy de quoy nous avons signé ledit present traité de nostre main et fait aposer la cachet de nos armes.

TALLARD.
BRIORD.

PORTLAND.
JERSEY.

J. VAN ESSEN.
F. B. DE REEDE.
A. HEINSIUS.
G. DE NASSAU.
DE WEEDE.
W. V. HARREN.
AR. LEMKER.
VAN HEECK.

[Here follow the powers granted by Louis XIV. to the Count of Briord, February 1, 1700.]

Nous ayant agreable le susdit traité en tous et en chacun les pointes et articles qui y sont contenus et declarez, avons iceux accepté, approuvé, ratifié, et confirmé, et par ces presentes signées de nostre main, acceptons, approuvons, ratifions, confirmons; promettant en foy et parolle de roy de l'accomplir, observer, et faire observer sincerement et de bonne foy sans aller ny souffrir qu'il soit allé directement ou indirectement au contraire sous quelque pretexte et occasion que ce puisse estre. En temoin de quoy nous avons fait mettre nostre scel a ces presentes. Donné a Versailles le neufiesme jour d'Avril l'an de grace mil sept cens, et de nostre regne le cinquante septiesme.

LOUIS.

Par le Roy.
COLBERT.

Treaty of alliance between Spain and Portugal, concluded at Lisbon, June 18, 1701, N. S. Ratification by Portugal, June 18, 1701. [Ratification by Spain, July 1, 1701.]

INTRODUCTION.

After the accession of the Duke of Anjou, grandson of Louis XIV., to the Spanish throne ¹ Louis XIV. controlled the governments of both kingdoms.² This control he proposed to exercise for the benefit of French trade, particularly with Spanish America, and for the ruin of English and Dutch trade in that and other parts of the world.³

Aware that the governments of England and the United Netherlands suspected his designs and were likely to oppose them by arms, Louis at once began to plan the defense of French and Spanish territory in Europe and America.⁴ Essential to his purpose was an alliance with Portugal providing for the closing of that country's ports to enemies' ships, in order to prevent the landing of hostile forces and their march against the vulnerable western border of Spain.⁵

On January 24, 1701, Louis XIV. empowered President Rouillé, his ambassador at Lisbon, to conclude a treaty with Pedro II. binding the latter to close the ports of his kingdom to enemies of the French king, and to stop all commerce with them.⁶ Pedro II. had difficulty in actually deciding on the alliance. For some reasons he would have preferred to remain neutral.⁷ Fearing the increase in Louis XIV.'s strength from the union of France and Spain, he was reluctant to support it.⁸ Moreover he knew that hostility to the maritime powers would cause Portugal great commercial loss.⁹ On the other hand, he was in a strong position for bargaining and was willing to sell

¹ See above, Doc. 86, Introduction, p. 16.

² A. Baudrillart, *Philippe V. et la Cour de France*, vol. I., ch. I.

³ C. Hippeau, *Avènement des Bourbons*, II. 308, 309, 384, 385, 396, 412, 423; L. von Ranke, *History of England*, V. 239, 246, 263; cf. *Recueil des Instructions*, XII.: *Espagne*, II. 43, 76.

⁴ Hippeau, *op. cit.*, II. 380, 381, 383, 384, 391, 394-396, 403, 412, 422, 423, 428, 431, 435, 438, 439, 481, 482; *Oeuvres de Louis XIV.*, VI. 38; Millot, *Mémoires, Duc de Noailles*, II. 37. The Spanish government, on Jan. 5, 1701, signed orders for its governors in America to receive French vessels into Spanish ports and to sell them what they needed. Hippeau, *op. cit.*, II. 419, 420.

⁵ *Ibid.*, II. 446, 449, 462.

⁶ A. Legrelle, *La Succession d'Espagne*, IV. 206.

⁷ Scelle, *La Traite Négrière*, II. 71.

⁸ *Recueil des Instructions*, III.: *Portugal*, p. 229; "The Portuguese are much in the same situation the States are in, as to the danger from the union of France and Spain." Manchester to Stanhope, Apr. 15, 1701, C. Cole, *Memoirs*, p. 360.

⁹ Legrelle, *op. cit.*, IV. 207; Cole, *op. cit.*, p. 360.

his friendship for a high price, provided that Spain as well as France became his ally upon his own terms. Louis XIV. desired Spain to enter into this alliance, and on March 1 the Spanish Secretary of State empowered Rouillé to negotiate a treaty between Spain and Portugal in accordance with instructions to be sent from France.¹⁰ About a fortnight later negotiations began. Portugal advanced many demands. The one of especial importance for us, which became the second article of the Spanish-Portuguese treaty, printed in part below, required Spain to compensate the Royal Guinea Company of Portugal, holder of the *assiento* or contract for supplying negroes to Spanish America, for losses caused it by the Spanish officials in America. After Spain had conceded this and other demands, and France had complied with the demands made on her, Portugal put forward some new conditions, later reduced to one—that the King of Spain should not merely agree to the principle of compensating the Guinea Company, but should definitively adjust all of the company's pretensions and pay a fixed sum as indemnity.¹¹ Then for the first time, as the historian of the *assiento* has remarked, the *assiento* "played the preponderant rôle in a diplomatic negotiation of prime importance".¹² Pedro II., who had a large financial interest in the company, made it clear that he would not conclude an alliance with either France or Spain until the adjustment (*transacción*) of the *assiento* was signed. Conscious of the necessity of Portugal's friendship, Louis XIV. and the French councillors of Philip V. insisted that Spain should make the requisite concessions.¹³ Although some of the leading Spanish ministers stood out against the treaty—for they would rather have subjugated Portugal as a rebel than acknowledge her as an equal—the Council of State recognized its necessity.¹⁴ The Spanish government conceded Portugal's demands, and the two alliances as well as the *transacción* were signed at Lisbon on June 18, 1701.

The two treaties of alliance were closely similar. Thirteen articles were virtually identical except for the name of one of the contracting powers. The main provisions of these articles were as follows: Portugal was to guarantee the will of Charles II. of Spain in so far as it dealt with the Spanish succession, and close the ports of Portugal and its dominions to subjects, warships, and merchant vessels of any power making war on Castile or France for the purpose of obstructing the succession. In case of war neither France nor Spain should make peace with England until the latter acquitted Portugal of her debts arising from reprisals made in the time of Prince Rupert;¹⁵ if there were no war, the Bourbon powers should try to make England accept the satisfaction offered by Portugal. France and Spain should not make peace

¹⁰ Legrelle, *op. cit.*, IV. 207, 208; Scelle, *op. cit.*, II. 71.

¹¹ Legrelle, *op. cit.*, IV. 208-210; Scelle, *op. cit.*, II. 72-76.

¹² *Ibid.*, II. 77.

¹³ *Ibid.*, II. 83 ff.; Baudrillart, *op. cit.*, I. 70.

¹⁴ Scelle, *op. cit.*, II. 83-87; *Recueil des Instructions*, III.: *Portugal*, p. 48; Millot, *Mémoires, Duc de Noailles*, pp. 50, 75, 76.

¹⁵ See Doc. 45, Introduction, pp. 31-32, in vol. II. of this series.

with England until she restored to Portugal the island of Mahim near Bombay and anything else held by her contrary to the agreement respecting Queen Catharine's dowry.¹⁶ If England should stop her annual payments to Queen Catharine, France, Spain, and Portugal should make them up between them. France and Spain should not make peace with the States General until the latter had acquitted Portugal of a certain debt; if there were no war they should cause the Dutch to be satisfied with a reasonable payment. They would compel the Dutch to restore Cochin and Cananor to Portugal, or, if there were no war, to accept the compensation offered by Portugal. In case there were war, they would guarantee to Portugal the places taken by her from the Dutch in India and Africa. They would protect Portugal against English and Dutch pretensions on account of losses resulting from the reception of French privateers into Portuguese harbors during the past war. They would not allow the Dutch to make claims on account of their losses in Brazil; but rather, in case of war, they would make the Dutch renounce their pretensions. Each Bourbon king guaranteed the other's treaty with Portugal of June 18, 1701. In case of war neither Bourbon king would make peace apart from Portugal, or Portugal apart from either. The league was to last twenty years.

By other articles peculiar to the French treaty France guaranteed the Spanish-Portuguese treaty of 1668,¹⁷ promised to aid Portugal if the latter were attacked by Spain or by opponents of Philip V.'s accession, and agreed that the provisional treaty of March 4, 1700, regarding disputed territory lying between French Guiana and the Amazon River should be made definitive.

Articles peculiar to the Spanish treaty were the second, regarding the *assiento*; the third, binding Spain, in case of war, to suspend her prohibition against exporting wheat from any Spanish territory into Portugal; the fourth, providing against the importation of Portuguese tobacco into Spain; the fourteenth, renouncing Spanish pretensions to the Colonia del Sacramento, on the north bank of the La Plata (now in Uruguay); and the fifteenth, confirming the Spanish-Portuguese treaty of 1668.¹⁷ All of these articles except the fourteenth are printed below. The second is supplemented by the *transacción* regarding the *assiento*, Doc. 88. The fourth is of interest as one of the measures whereby Louis XIV. seems to have attempted to exclude foreign competitors from the Spanish tobacco market for the benefit of the tobacco growers of Martinique. That, at any rate, is the reason given by Schonenberg, William III.'s representative at Madrid, for the orders issued by the Spanish government at the instance of France, in the spring of 1701, for the registration of all tobacco from Virginia and other foreign colonies. Holders of such tobacco were to have it sent out of Spain within the period of two months, under penalty of its being confiscated and burned.¹⁸

¹⁶ See Doc. 50, Introduction, in vol. II. of this series.

¹⁷ See Doc. 60, *ibid.*

¹⁸ Schonenberg to Secretary Vernon, Madrid, May 18, Aug. 10, 1701, P. R. O., St. Pap. For., Spain, no. 75. Aglionby, writing to Vernon on the same matter from Madrid

To the English and Dutch the conclusion of the Spanish-Portuguese alliance was a heavy blow. It seemed a step towards Louis XIV.'s goal of destroying the trade of the maritime powers for the furtherance of his own.¹⁹ It did not have the result hoped for by Portugal of preventing the maritime powers, through fear of commercial loss, from declaring war against France.²⁰

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on June 29, 1701, declared "that it is an interruption of comerce and done at the instigation and by the contrivance of the French. there is no doubt to bee made, many more of this kind must be expected and particularly now they are sure of Portugal with whom France and Spayne have signed an allyance offensive and defensive in case of a warr and our ships of all sorts will be forbid their ports. . . . Methinks it should be matter of serious reflexion for a house of commons to consider all these steps made so regularly by France towards uniting the power of Spaine to theirs; they seeme to carry with them the trade of the whole world, and England will have no place to send a ship to but the East Indias and their owne American Colonies." P. R. O., St. Pap. For., Spain, no. 75.

¹⁹ On Aug. 11, 1701, Schonenberg wrote from Madrid to the Earl of Manchester, "they expect here back Mr. de Casse who returns from France and who is to go to the Isles of St. Domingo, of which he is made governor. The French work night and day to make themselves absolute masters of the trade in the Spanish islands, in order to ruin intirely that of England and Holland".

²⁰ *Recueil des Instructions*, III.: *Portugal*, p. 230.

TEXT.²¹

Don Felipe, por la gracia de Dios, rey de las Españas, de las dos Sicilias, de Jerusalem, de las Indias etc., archiduque de Austria; duque de Borgoña, de Milán; conde de Abspurg, y del Tyrol etc. Habiendose ajustado, concluido, y firmado en la corte de Lisboa en 18 del mes de junio de este presente año de 1701 un tratado de alianza éntre mi y el Rey de Portugal mi buen hermano, siendo plenipotenciarios para este efecto, por parte de S. M. Lusitana Manuel Tellez de Silva marqués de Alegrete, de su consejo de estado, gentil-hombre de su cámara, y veedor de la hacienda, Francisco de Távora conde de Alvor, asimismo de su consejo de estado, y presidente de lo ultramarino, y Mendo de Foyos Pereyra, de su consejo y su secretario de estado; y por mi parte el presidente Rouillé embaxador extraordinario de S. M. Christianísima en la misma corte de Lisboa: el qual tratado, traducido de portuges en castellano, es como se sigue.

Don Pedro, por la gracia de Dios, rey de Portugal, y de los Algarbes de la parte de acá y de la de allá del mar de Africa, señor de Guinea, y de la conquista, navegacion, y comercio de Etiopia, Arabia, Persia, y la India etc. Hago saber á los que esta mi carta patente de aprobacion, ratificacion, y confirmacion vieren: que en esta mi corte y ciudad de Lisboa, hoy diez y ocho del mes de junio del presente año de mil setecientos uno, se ha ajustado, concluido, y firmado un tratado de alianza entre mi y el Rey Católico mi buen hermano; siendo plenipotenciario por parte de su magestad Católica para este efecto, el Señor de Rouillé, embaxador extraordinario del Rey Christianísimo en esta mi corte; y por mi parte, Manuel Tellez de Silva, marqués de Alegrete, de mi consejo de estado, gentilhombre de mi cámara, y veedor de hacienda; Francisco de Távora, conde de Alvor, tambien de mi consejo de estado, y presidente de lo ultramarino; y Mendo de Foyos Pereyra, de mi consejo y mi secretario de estado: el qual tratado es el siguiente.

En nombre de la Santísima Trinidad.

1. Deseando S. M. de Portugal manifestar al Rey Católico quanto ha apreciado el ver recaida la sucesion de España en su real persona, y la grande estimacion que hace de su buena amistad, y quanto procura interesarse en sus conveniencias, y mayor seguridad de sus reynos y dominios; se obliga, por este nuevo tratado de alianza, á la garantía del testamento de Carlos II rey Católico de España,²² en la parte que mira á que S. M. Católica suceda y posea todos los estados y dominios que poseía el dicho rey Carlos II: de suerte que habiendo algun príncipe ó potencia que mueva guerra á Castilla, ó á Francia, para impedir ó disminuir la dicha sucesion, S. M. de Portugal negará sus puertos, asi en éste reyno como en todos sus dominios, á los vasallos y navios, ya sean de guerra, ó mercantes, de los tales príncipes ó potencias, de manera que no puedan tener en ellos ningun género de comercio, ni de acogida; ántes los que vinieren á los dichos puertos, serán tratados como enemigos de la corona de Portugal.

2. Y respecto de que el asiento de la introduccion de negros en Indias, en que los Portugueses tienen empeñado tanto caudal, ha padecido grandes pérdidas y perjuicios por las vexaciones que se le han hecho en Indias por los mini-

²¹ The text is taken from the *Colección de los Tratados* (1796-1807), I. 41-63. This collection was issued by royal authority.

²² See above, p. 20.

stros del Rey Católico; estará obligado S. M. Católica á mandar reparar todos los daños que por la dicha causa hubieren resultado al asiento, y ordenar que en adelante se le observen puntualmente las condiciones del dicho contrato.²³

3. Si sucediere que haya guerra, y que en Portugal haya falta de pan, S. M. Católica estará obligado á mandar levantar la prohibicion de sacar pan del reyno de Castilla para Portugal, y no prohibirá que de qualquiera de sus islas y dominios se pueda sacar pan para el dicho reyno, con tal que sea cargado en navios de naciones amigas.

4. Y por quanto en la verdadera amistad y buena inteligencia que se desea conservar entre ambas coronas, se deben evitar los daños que pueden ser reciprocos; y en la concordia que se hizo entre los Señores Reyes de Castilla y Portugal en tiempo del rey D. Sebastian,²⁴ declarandose los casos en que los delinquentes se habian de entregar de parte á parte, y la restitution de los hurtos, no podia comprehendirse el género del tabaco, que entónces no habia quando se hizo la concordia, y despues se ha introducido, de manera que, asi en Castilla como en Portugal, es una de las principales rentas de las coronas su estanco; estará obligado S. M. Católica á hacer que en ninguna de sus tierras de los reynos y principados de España se pueda introducir tabaco de Portugal, sea hecho ó molido en los dichos reynos y principados, ó fuera de ellos; y mandará destruir todas las fabricas que hubiere de tabaco portugués en los dichos sus reynos y dominios, como tambien las que se hicieren de nuevo, imponiendo graves penas á los culpados en estos delitos, y encargando su observancia y execucion, no solo á los ministros de justicia, si no tambien á los cabos y oficiales de guerra. Y de la misma suerte se obliga S. M. de Portugal á que en su reyno no haya fabricas de tabaco para introducir en Castilla, mandando destruirlas, y evitarlas en la forma sobredicha.

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15. S. M. Católica no solo se obliga á guardar inviolablemente todos los articulos de este tratado, sino tambien todos los de la paz ajustada entre las dos coronas en el tratado que se hizo en el año de mil seiscientos sesenta y ocho,²⁵ los quales se tienen aqui por expresados y declarados, como si de todos y cada uno de ellos se hiciese especial mencion. Y en caso de ser necesario, ratifica y reválida de nuevo el dicho tratado, teniendo por suplido todo quanto de derecho se puede suplir, y cabe en el poder real, aunque para esto se necesitase de declaraciones muy expresas.

16. Por quanto resultan reciprocas conveniencias á las coronas de Castilla y Francia de la union de la nueva alianza, que por este tratado se consigue; estará obligado el Rey Católico, no solamente á observar este tratado, que con él se celebra, sino tambien el que se hace para la misma union y alianza con el muy alto y muy poderoso príncipe Luis XIV., rey Christianísimo de Francia, quedando S. M. Católica por garante del dicho tratado, paraque se guarde inviolablemente, como en él se contiene, y como si se hubiese celebrado con su Magestad Católica el dicho tratado.

²³ On the asiento see Doc. 55, p. 94, and Doc. 74, p. 266 in vol. II. of this series.

²⁴ The reference is probably to the agreement concluded between the crowns in February, 1569, referred to in Viscount de Santarem, *Quadro Elementar* (1842-1876), II. 109. Methuen, writing to Balthwayt from Lisbon on Sept. 13, 1701, and referring to the recently concluded Spanish-Portuguese treaty, says, "The treaty with King Sebastian was never printed, and contained nothing material but some regulations concerning the trade of both nations". P. R. O., St. Pap. For., Portugal, no. 18.

²⁵ Doc. 60, in vol. II. of this series.

17. Si se llegare á romper la guerra con algun príncipe ó potencia de Europa, S. M. Católica no podrá hacer paz, ni tregua, ó suspension de armas con ninguno de los dichos príncipes ó potencias, sin que en ellas entre tambien la corona de Portugal, tratando de sus conveniencias como de las propias de sus reynos y dominios, paraque se ajusten con utilidad y ventaja de la misma corona. Y de la misma suerte Portugal no hará paz, ni tregua, ó suspension de armas, con ninguno de los dichos príncipes ó potencias, sin que en ellas éntre su Magestad Católica, y trate de las conveniencias de su corona, como de las propias.

18. Esta liga, y sus obligaciones recíprocas, durarán, y tendran efecto y vigor, por espacio de veinte años.

Todas las quales cosas, contenidas en los diez y ocho artículos de este tratado, han sido acordadas y concluidas por nos los sobredichos plenipotenciarios de SS. MM. Católica y de Portugal, en virtud de las plenipotencias concedidas a nos por SS. MM: en cuya fé, firmeza, y testimonio de verdad, hemos firmado, y corroborado el presente tratado con nuestras manos, y sellos de nuestras armas. En Lisboa á 18 dias del mes de junio, año del nacimiento de N. S. J. C. de 1701.—ROUILLÉ. El Marqués de ALEGRETE. El Conde de ALVOR. MENDO DE FOYOS PEREIRA.

Y habiendo yo visto el dicho tratado de alianza, despues de bien considerado y examinado, he aprobado, ratificado, y confirmado, apruebo, ratifico, y confirmo, todas y cada una de las cosas contenidas en él, y por la presente le doy por bueno, firme, y válido: prometiendo, en fé y palabra de rey, observar y cumplir inviolablemente su forma y tenor, y hacerlo cumplir y observar, sin hacer, ó permitir que se haga, cosa alguna en contrario, directa ó indirectamente, en qualquier modo que sea, renunciando todas las leyes y costumbres, y todas las demás cosas que haya, y puedan haber en contrario. Y para fé y firmeza de todo, he mandado otorgar el presente despacho de ratificacion, firmado por mi, y sellado con el sello grande de mis armas. Dado en la ciudad de Lisboa, á 18 dias del mes de junio.—ANTONIO DE OLIVEIRA DE CARVALHO la hizo año del nacimiento de nuestro Señor Jesu-Christo de 1701.—MENDO DE FOYOS PEREIRA lo refrendé.—EL REY.

El qual tratado aqui escrito é inserto, como arriba queda dicho, habiendole yo visto, considerado bien, y examinado, le apruebo, ratifico, y confirmo, y todas y cada una de las cosas en él contenidas, y por la presente le doy por firme y válido: prometiendo, en fé y palabra de rey, observar y cumplir inviolablemente su forma y tenor, y hacerle cumplir y observar, sin hacer, ni permitir que se haga, cosa alguna en contrario, directa ó indirectamente, en qualquier modo que ser pueda, renunciando todas las leyes y costumbres, y todas las otras cosas que haya y pueda haber en contrario. Y en testimonia de lo susodicho, y para firmeza de ello, mandé despachar la presente, firmada de mi mano, sellada con el sello secreto, y refrendada de mi infírascrito secretario de estado. Dada en Madrid á 1º de julio de 1701.—YO EL REY.—D. JOSEPH PEREZ DE LA PUENTE.

TRANSLATION.

Don Philip by the grace of God king of the Spains, the Two Sicilies, Jerusalem, the Indies, etc., archduke of Austria, duke of Burgundy and of Milan, count of Hapsburg and of the Tyrol, etc.

Whereas a treaty of alliance between me and the king of Portugal, my good brother, was adjusted, concluded, and signed in the court of Lisbon on June 18, of this present year 1701, the plenipotentiaries for this purpose being, on the part of his Portuguese Majesty, Manuel Tellez de Silva, marquis of Alegrete, of his council of state, gentleman of his bedchamber, and inspector of his treasury; Francisco de Távora, count of Alvor, also of his council of state, and president of the Council for the Colonies; and Mendo de Foyos Pereyra, member of his council and his secretary of state; and on my part, President Rouillé, ambassador extraordinary of his Most Christian Majesty in the said court of Lisbon—which treaty, translated from Portuguese into Castilian, is as follows:

I, Dom Pedro, by the grace of God king of Portugal and of the Algarves on this side and beyond the sea of Africa, lord of Guinea and of the conquest, navigation, and trade of Ethiopia, Arabia, Persia, and India, etc., make known to those who shall see this my letter patent of approval, ratification, and confirmation, that in this my court and city of Lisbon, today, June 18 of the present year, 1701, there has been adjusted, concluded, and signed a treaty of alliance between me and the Catholic king my good brother, the plenipotentiary for this purpose on the part of his Catholic Majesty being the Señor de Rouillé, ambassador extraordinary of the Most Christian king in this my court; and on my part being Manuel Tellez de Silva, marquis of Alegrete, of my council of state, gentleman of my bedchamber and inspector of the treasury; Francisco de Távora, count of Alvor, likewise of my council of state and president of the Council for the Colonies, and Mendo de Foyos Pereyra, of my council and my secretary of state, which treaty is as follows:

In the name of the Most Holy Trinity.

1. His Majesty of Portugal, wishing to make clear to the Catholic King how much value he has attached to seeing the Spanish succession devolve upon his royal person, and his great esteem of his good friendship, and how much he tries to advance his interests, and the greater security of his kingdoms and dominions, binds himself by this new treaty of alliance to guarantee the testament of Charles II., Catholic king of Spain, so far as it relates to his Catholic Majesty's succeeding to and possessing all the states and dominions possessed by the said King Charles II., so that if any prince or power should begin war against Castile or France, in order to prevent or detract from the said succession, his Majesty of Portugal will deny his ports, both in this kingdom and in all his dominions, to the subjects and ships, whether of war or commerce, of such princes or powers, so that they may not have any kind of trade or refuge in them; but on the contrary, those who shall come to the said ports shall be treated as enemies of the crown of Portugal.

2. And considering that the assiento for the introduction of negroes into the Indies, in which the Portuguese have employed so much capital, has suffered great losses and detriment through the wrongs done it in the Indies by the agents of the Catholic king, his Catholic Majesty shall be obliged to order the reparation of all damages resulting to the assiento from this cause, and to command that in future the conditions of the said contract shall be punctually observed.

3. If a new war should occur, and there should be a lack of wheat in Portugal, his Catholic Majesty shall be obliged to order the removal of the

prohibition against exporting wheat from the kingdom of Castile for Portugal, and shall not prohibit the export of wheat from any of his islands and dominions to the said kingdom, provided that it is shipped on vessels of friendly nations.

4. And whereas in accordance with the sincere amity and good intelligence that it is desired to preserve between the two crowns, injuries which may be mutual ought to be avoided; and whereas in the agreement made between the kings of Castile and Portugal in the time of King Sebastian, where the cases were stated in which offenders had to be given up by one side to the other, and things stolen had to be restored, the commodity tobacco could not be included because there was no such commodity at the time when the agreement was made; and tobacco was afterwards introduced, so that in both Castile and Portugal the monopoly of it is one of the principal sources of revenue of the crowns, his Catholic Majesty will be bound to provide that Portuguese tobacco cannot be imported into any of his territories within the kingdoms and principalities of Spain, whether made or ground in the said kingdoms and principalities or outside them; and he shall order the destruction of whatever manufactories of Portuguese tobacco there may be in his said kingdoms and dominions, as well as of new ones that may be built, imposing severe penalties on those guilty of these transgressions, and entrusting their observance and execution, not only to the ministers of justice, but also to the military chiefs and officers. And in the same way his Majesty of Portugal pledges that in his kingdom there shall be no factories for making tobacco for import into Castile, but he will order them to be destroyed and prohibited in the manner aforesaid.

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15. His Catholic Majesty not only binds himself to guard inviolably all the articles of this treaty, but likewise all those of the peace adjusted between the two crowns in the treaty concluded in the year 1668, which are to be considered as expressed and set forth here, as if all and each of them were specially mentioned. And in case that it should be necessary, he ratifies and reinvalidates the said treaty anew, considering as supplied all that may legally be supplied, and that belongs to the royal power, even though very express declarations should be required for this purpose.

16. Whereas reciprocal advantages to the crowns of Castile and France result from the union of the new alliance gained by this treaty, the Catholic king shall be obliged not only to observe this treaty concluded with him, but also the treaty made for the same union and alliance with the very high and very mighty prince, Louis XIV., Most Christian king of France. His Catholic Majesty shall be guarantor of the said treaty in order that it may be inviolably kept, according to the terms of the treaty, and as if the said treaty had been concluded with his Catholic Majesty.

17. If war should eventually break out with any prince or power of Europe, his Catholic Majesty shall not make peace, truce, or suspension of arms with any of the said princes or powers unless the crown of Portugal is also included in them, but shall consider its interests just as those of his own kingdoms and dominions, so as to adjust them for the utility and advantage of the said crown. And in the same way Portugal shall not make peace, truce, or suspension of arms with any of the said princes or powers, unless his Catholic Majesty enters into them, and [Portugal] considers the interests of his crown as those of her own.

18. This league and its reciprocal obligations shall endure and remain in force for a period of twenty years.

All these things contained in the eighteen articles of this treaty have been accorded and concluded by us the aforesaid plenipotentiaries of their Catholic and Portuguese majesties by virtue of the full powers granted to us by their majesties. In faith, confirmation, and testimony of this, we have signed the present treaty with our hands and confirmed it with the seals of our arms. In Lisbon, June 18, A. D. 1701. ROUILLÉ. The Marquis of ALEGRETE. The Count of ALVOR. MENDO DE FOYOS PEREIRA.

And I, having seen the said treaty of alliance, and having considered and examined it carefully, have approved, ratified, and confirmed, and do approve, ratify, and confirm, all and singular the things therein contained, and by these presents I deliver it as good, firm, and valid, promising on the faith and word of a king to observe and inviolably fulfill its form and tenor, and to cause it to be fulfilled and observed, without doing or permitting to be done anything to the contrary, directly or indirectly, in any way whatever, renouncing all laws and customs and all other things that are or may be to the contrary. And for faith and stability of the whole, I have ordered the present patent of ratification to be executed, signed by me, and sealed with the great seal of my arms. Given in the city of Lisbon, June 18.—ANTONIO DE OLIVEIRA DE CARVALHO made it, A. D. 1701.—MENDO DE FOYOS PEREIRA countersigned it.—THE KING.

I, having seen, considered, and examined carefully this treaty, here written and inserted, as is stated above, approve, ratify, and confirm it, and all and each of the things therein contained, and by these presents I deliver it as firm and valid, promising, on the faith and word of a king, to observe and fulfill inviolably its form and tenor, and cause it to be fulfilled and observed, without doing or permitting to be done anything to the contrary, directly or indirectly, in any way whatsoever, renouncing all laws and customs, and all other things that may or might be to the contrary. And in testimony of the aforesaid, and in order to make it stable, I have ordered these presents to be dispatched, signed by my hand, sealed with the secret seal and countersigned by my undersigned secretary of state. Given in Madrid, July 1, 1701.—I THE KING.—D. JOSEPH PEREZ DE LA PUENTE.

Adjustment (Transacción) of the assiento, concluded by Spain and Portugal at Lisbon, June 18, 1701, N. S. Ratification by Spain, July 1, 1701. [Ratification by Portugal, June 18, 1701.]

INTRODUCTION.

An adjustment by Spain and Portugal of questions relating to the assiento or contract executed on July 12, 1696,¹ between the Spanish government and the Royal Guinea Company of Portugal,² supplemented the Spanish-Portuguese treaty of alliance,³ and was signed on the same day.

The assiento of 1696 had been obtained by the Portuguese Company in the face of English and Dutch competition for the privilege of supplying Spanish America with slaves.⁴

By its terms the Portuguese Company had agreed to introduce into the Indies within the period of six years and eight months, next following July 7, 1696, 10,000 tons of negroes, equivalent to 30,000 "pieces of the Indies",⁵ paying to the Spanish government duties at the rate of 112½ pesos for each ton. The company further promised to pay Spain in advance 200,000 pesos, which, together with 64,000 pesos for interest thereon, were to be allowed to the company instead of the duties otherwise payable in the last years of the agreement.⁶ By opening Spanish-American ports to the company⁷ the assiento infringed the principle of mutual exclusion from each other's colonies, asserted in the treaty of peace made between Spain and Portugal in 1668.⁸ In violation of existing Spanish laws it permitted the company to export even the precious metals from Spanish America directly to Portugal.⁹ It allowed the company to transport negroes not only in its own ships but also in those of foreigners friendly to Spain.⁹ (Since the latter would be English and Dutch ships, the assiento tended to association rather than competition with the maritime powers.)¹⁰ The assiento provided that officials of Spain in America should not

¹ References to the printed text of this assiento are given in the Bibliography. Several of its articles are printed in foot-notes below.

² An account of this company, known also as the Company of Cacheu and Cape Verde, is in Scelle, *La Traite Nègrière*, vol. II., chs. I. and II.

³ Doc. 87.

⁴ Scelle, *op. cit.*, II. 39, 40.

⁵ Scelle, *op. cit.*, I. 506, defines this expression as follows: "Bien qu'un nègre de qualité supérieure puisse remplir les conditions nécessaires à la pièce d'Inde, le plus souvent il en faut plusieurs pour la composer, d'ailleurs sans distinction de sexe."

⁶ See art. 1, printed below, in translation, as note 26, art. 3, printed below as note 32, and art. 4, printed below as note 30.

⁷ See art. 6, printed below as note 23.

⁸ Doc. 60, art. 4, in vol. II. of this series.

⁹ See art. 6, printed below as note 23.

¹⁰ Cf. Scelle, *op. cit.*, II. 45, 46, 49.

detain ships engaged in this trade or seize them for warlike expeditions or other purposes, or in any way obstruct the action of the *assiento*.¹¹

After the company had operated peacefully for two years there began to be complaints both against it and by it.¹² On the one hand the Spaniards found that the company had engaged in illicit commerce of merchandise, besides failing to pay the required duties on all the negroes brought in.¹³ On the other hand the company had been badly treated by Spanish colonial officials. In Cartagena, the seat of the company's principal factory, serious friction had developed between the governor and Gaspar de Andrade, the company's administrator.¹⁴ Disputes arose regarding the judges conservators in America whose nomination and recall the *assiento* vested in the company.¹⁵ The company was unable to meet its obligations. Its trade had been injured by de Pointis's sacking of Cartagena,¹⁶ and by the Scottish establishment at Darien. The Scots carried on an illicit trade in negroes, and gave the governor at Cartagena a pretext for regarding the English as enemies, and seizing English slavers in the company's employ.¹⁷ The Portuguese ambassador at Madrid could not get satisfaction for these wrongs. The matters in dispute were referred to the Council of the Indies for settlement. The Council suggested the rescinding of the *assiento*.¹⁸ Such was the troubled history of the company prior to the "adjustment" of June, 1701.

The principal provisions of the adjustment were briefly as follows: the King of Spain renounced his claims against the company; considered the *assiento* as nullified; promised to have Andrade and other Portuguese freed; released the company from any obligation to pay duties, except for negroes actually introduced into the Indies; consented to liberate the company's ships detained in the Indies; agreed to repay the 200,000 pesos advanced, and the interest thereon, and in addition to pay the company 300,000 cruzados in satisfaction of losses and claims. The King of Portugal, on his side, renounced all actions against the Spanish treasury. The King of Spain was to dispatch the orders necessary for the execution of the adjustment, any contravention of which should be regarded as a violation of the treaty itself.

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¹¹ Arts. 22 and 36.

¹² Scelle, *op. cit.*, II. 55.

¹³ *Ibid.*, II. 55, 56, 66, 67.

¹⁴ *Ibid.*, II. 57, 67.

¹⁵ *Assiento*, art. 33.

¹⁶ Doc. 84, Introduction; Scelle, *op. cit.*, II. 59.

¹⁷ *Ibid.*, II. 59, 60. On the establishment at Darien see Docs. 86 and 92, Introductions.

¹⁸ Scelle, *op. cit.*, II. 61-66.

(1802-1808), I. cxxxvi-cxlvi; J. F. Borges de Castro, *Collecção dos Tratados de Portugal desde 1640* (1856-1858), II. 122-127; C. Calvo, *Recueil des Traités* (1862-1866), II. 55-60.

Translation: French. G. F. de Martens, *op. cit.*, I. cxxxvii-cxlvii.

References: Contemporary and early writings. The text of the assiento concluded between the royal Council of the Indies at Seville and a member of the Royal Company of Guinea, of Lisbon, in Madrid, on July 12, 1696, and frequently referred to in the adjustment printed below, is in J. F. Borges de Castro, *op. cit.*, II. 44-82, and C. Calvo, *op. cit.*, II. 5-42.

References: Later writings. G. Scelle, *Histoire Politique de la Traite Nègre aux Indes de Castille* (1906), II. 35-69, 93-97; E. Donnan, *Documents illustrative of the History of the Slave Trade to America*, I. (1930) 107, 458-459.

TEXT.¹⁹

Don Felipe Quinto, por la gracia de Dios, rey de las Españas, de las Dos Sicilias, de Jerusalem, de las Indias etc., archiduque de Austria; duque de Borgoña, de Milán; conde de Abspurg, y del Tyrol etc. Habiendose abocado en la corte de Lisboa el presidente Rouillé,²⁰ embajador extraordinario de su Magestad Christianísima en ella, con poderes mios, y con los del muy alto y muy poderoso príncipe D. Pedro rey de Portugal mi buen hermano y primo, Manuel Tellez de Silva, marqués de Alegrete, de su consejo de estado, gentil-hombre de su cámara, y veedor de la hacienda; Francisco de Távora, conde de Alvor, asimismo de su consejo de estado, y presidente de lo ultramarino; y Mendo de Foyos Pereyra, de su consejo y su secretario de estado, y ajustándose por ellos en 18 de junio de este año de 1701, en virtud de los referidos poderes, una transaccion entre mi y su Magestad de Portugal, la qual, traducida de portugués en castellano, es como se sigue:

En nombre de la Santísima Trinidad.

Por quanto se ha estipulado en el articulo segundo del tratado²¹ de nueva alianza y garantía del testamento de D. Carlos II., rey Católico de España, en la parte que mira á suceder en todos sus estados y dominios el muy alto y muy poderoso príncipe D. Felipe V., por la gracia de Dios, rey Católico de España, ajustado con el muy alto y muy poderoso príncipe D. Pedro II., tambien por la gracia de Dios, rey de Portugal, que se repararian todos los daños que habian resultado á la compañía del asiento de negros de Indias²² por las vexaciones y poca observancia con que los ministros de S. M. Católica habian cumplido las condiciones del contrato; ha parecido conveniente á ambas Magestades se hiciese en artículos separados una amigable transaccion de todos los derechos, acciones, y pretensiones, que podian resultar á una y otra Magestad, y á los interesados en la compañía, por qualquiera causa que fuese, para que se quitase toda ocasion que pudiese ser de menos satisfacción á ambas Magestades, habiendo pleytos, de que se seguirian delaciones y perjuicios; quedado esta materia con sus dependencias compuesta de suerte, que cesen todos los motivos de escandalo o queja en virtud de esta transaccion: para

¹⁹ The text is taken from the *Colección de los Tratados* (1796-1801), I. 67-81. The *Colección* was published by royal authority.

²⁰ On Rouillé see above, pp. 29, 30.

²¹ For this treaty see above, Doc. 87.

²² Cf. above, note 2.

cuya conclusion y ajuste han dado sus magestades plenipotencias, es á saber ; su Magestad Católica, por su parte, al Señor de Rouillé, presidente en el gran consejo de su Magestad Christianísima, y su embaxador en esta corte de Lisboa ; y su Magestad de Portugal, por la suya, á los Señores, Manuel Tellez de Silva, marqués de Alegrete, conde de Villarmayor, comendador de las encomiendas de S. Juan de Alegrete, y lagáres de Soure de la Orden de Christo, S. Juan de Moura, y Santa Maria de Albufeira de la Orden de Avis, del consejo de estado, y gentilhombre de cámara de su Magestad de Portugal, y veedor de su hacienda ; Francisco de Távora, conde de Alvor, señor de la villa de Moita, alcaide mayor de Pinhel, y comendador de las encomiendas de San Andres de Freixeda, Porto Santo, Santa Maria de las dos Iglesias, y San Salvador del Basto de la Orden de Christo, del consejo de estado, y presidente de lo ultramarino ; y al Señor Mendo de Foyos Pereyra, comendador de la encomienda de Santa Maria de Massaón de la Orden de Christo, del consejo de S. M. de Portugal, y su secretario de estado. Los quales dichos plenipotenciarios, usando de los poderes que les son concedidos, han celebrado y ajustado entre sí amigablemente la transaccion abaxo escrita, que contiene catorce artículos separados, los quales han de tener su entera firmeza, y debida observancia, como parte inseparable del mismo tratado de nueva alianza y garantía, del qual será contravencion todo lo que se dexáre de cumplir y guardar de lo que va dispuesto y declarado en los artículos de esta transaccion.

1. Que su Magestad Católica cede todas las acciones que tiene y puede tener contra la compañía del asiento de negros, que le competen y puedan competir por qualesquier causas, razones, fundamentos, fraudes, y contravenciones que haya habido en el tiempo de la obligacion de este contrato, cediendolas todas S. M. Católica, como si no hubiesen acontecido.

2. Que su Magestad Católica da por extinguido y acabado el contrato de este asiento, aunque le falte parte del tiempo que habia de durar su obligacion, deshe el día en que se ajusta esta transaccion. Y respecto de que en el intervalo de tiempo, que precisamente ha de haber paraque lleguen á Indias las ordenes de su Magestad Católica en que asi lo mande declarar, podrán haber llegado algunas embarcaciones á Indias que hayan llevado negros para la provision de este asiento en la forma de la condicion sexta ;²³ se practicará con estas

²³ 6. "In regard that the Guinea Company must bring their cargo of blacks, either in their own ships or of such foreigners as are in friendship with this crown, into the several ports of the Indies, which are the same that were granted to Don Nicolas Porcio, *vizt.* Cumaná, Carácas, La Habana, Cartagena, Portovelo, Honduras, and La Vera Cruz, transporting them thither from the coasts of Guinea, or such other places as to them shall be most convenient, which privilege your Majesty did grant and dispense with in former agreements *de assiento*, it is a condition that your Majesty shall command that all ships which shall be employed in this traffic may enter freely and without any molestation into all or any of the aforesaid ports in the Indies, for to sell their blacks, with the same liberty of transporting them from port to port and to sell them for money or goods, and to bring away freely and without any let or hindrance, to any port of this crown or of the kingdom of Portugal, its dominions or territories, as to the said company shall seem most convenient, the whole produce and amount thereof in ryals, doblones, jewels and precious stones during the whole time of this assiento: and that the administrators of the said company shall be at liberty to order the said ships to depart from any of the said ports, at all such times and seasons as to them shall seem proper, without their being stopped, hindered or arrested upon any motive or pretense whatsoever, by viceroy, governor, or any other of your Majesty's ministers, by reason of the damages that from thence may arise, prohibiting under severe penalties, the hindering directly or indirectly the said traffic, your Majesty by your royal grant dispensing with what ever contained in this article for the space of the said six years and eight months, your Majesty also so far as relates to this agreement, taking off all

embarcaciones y en la venta de los negros lo mismo que si hubiesen llegado en el tiempo en que existía la obligacion del contrato, guardandoseles todas las exenciones, libertades, y franquicias en él estipuladas. Y si hubiere algunos negros, que por la obligacion del asiento se hayan introducido en las Indias, y estubieren por vender; se guardará con ellos lo dispuesto en la condicion veinte y ocho.²⁴

3. Que su Magestad Católica mandará poner en su entera libertad al administrador del asiento Gaspar de Andrade, como tambien a todas las demás personas portuguesas, que han servido en el asiento, y que se hallen arrestadas ó presas por qualquier causa que sea, sin poder ser obligadas, ni executadas por condenaciones, ó gastos algunos hechos por causa ú ocasion de sus prisiones ó procesos. Y todos los papeles, libros, y efectos que se tomaron, embargaron, ó sequestraron á Gaspar de Andrade, ú otras qualesquier personas, serán entregadas á aquellas que presentaren poderes especiales, de la compañía para esta comision. Y se mandará dar pasage para este reyno en navios portugueses, castellanos, ó franceses para sus personas, como tambien para las haciendas y generos procedidos de los efectos de la compañía, tocando la eleccion de los navios á las mismas personas; y siendo en portugueses, podrán venir en derecho á los puertos de Portugal, en la forma y manera que les estava concedido en tiempo del contrato por la condicion quince;²⁵ y viniendo en navios castellanos, gozarán de todo lo que por la dicha condicion les seria permitido si durase el contrato; y lo mismo se les concederá viniendo en navios franceses á los puertos de Castilla y Portugal.

4. Que si hubiere algunas personas que hayan recibido efectos de la compañía, siendo vasallos de la corona de Portugal, los obligarán á embarcar.

manner of prohibitions against the bringing away of ryals of silver, and gold, from the Indies and these kingdoms and also in like manner, every law, custom and decree, that is, or may be made contrary to anything contained in this assiento, and especially in the capitulations, stipulations and treaties of peace and trade with the crown of Portugal, wherein the contrary is provided, with which your Majesty will be pleased to dispense at this time, so far as it shall relate to this agreement and the articles thereof."

The above translation, as well as that of other articles given in subsequent foot-notes, is taken from a manuscript, probably contemporary with the treaty, preserved in the London Public Record Office, Treaty Papers, no. 66. The spelling has been modernized by the editor. The translations have been compared with the original Spanish.

²⁴ 28. "In conformity to the 15th article adjusted with the consulship, the petitioners may make an end of selling their blacks in any port, carrying the remainders from one port to another, except that of Buenos Aires; which is what has been granted to former undertakers."

²⁵ 15. "With regard to the eleventh article, stipulated by Marin, wherein he refers to the 11th article adjusted with the consulship, about the return of the ships of this assiento, to Spain, loaden with the produce of their blacks, either in company of the flota, or of the galleons, or singly and by themselves; it is agreed, that in such case, according to the 2d article with the consulship, the ships that should so come belonging to the assiento, should not pay anything upon account of indults or impost, and if they shall come under convoy of the fleet or galleons, as to the usual imposts and customs, considering that your petitioners and company do pay their dues and customs to your Majesty for the introduction of blacks, are restrained from having any other commerce than that of said blacks and their produce, your Majesty will dispatch your royal order, declaring therein, that if at any time the said ships as aforesaid should arrive in Spain and any extraordinary payments should be ordered to be made by way of impost or for any fault or transgressions on the loading of the ships of the flota or galleons, your Majesty will be pleased to declare in the authorities granted to the consulship for making the repartitions, or payments, that no repartition shall be made or tax laid upon the goods or effects brought in the ships belonging to this traffic; your Majesty farther declaring that none of the goods or effects, shall be prohibited to your petitioners, which are not by the laws of your Majesty prohibited to the several merchants and traders that go in flota and galleons."

siendo requeridos los gobernadores y qualesquier otras justicias, por los procuradores de la compañía. Y todos los papeles que se les hallaren pertenecientes á la dicha compañía, caudales, y efectos que tubieren, se entregarán á los comisarios de ella por inventario hecho judicialmente, para que conste con verdad lo que se les hubiere hallado.

5. Sin embargo de que por la condicion primera ²⁶ del contrato se obligó la compañía á introducir en Indias en el tiempo de su duracion diez mil toneladas de negros, reguladas en la forma de la misma condicion, y de la septima,²⁷ habiendose de pagar á S. M. Católica los derechos de los negros que faltasen, para la introduccion de las dichas 10 [M] toneladas, como si efectivamente se hubiesen vendido é introducido en Indias; S. M. Católica, por las justas causas que le mueven, concede á la compañía que no pague derechos sino de los negros que real y enteramente ha introducido y vendido en Indias, haciendose la cuenta de los negros por las toneladas, en la forma de la referida condicion séptima.

6. Que S. M. Católica mandará expedir las ordenes necesarias paraque, en el tiempo de dos meses perentorios, se cobre efectivamente todo lo que se debe en las Indias á la compañía; y en el ajuste de las cuentas de los derechos de los negros que la compañía ha vendido en las Indias, estarán obligados los ministros de S. M. Católica á aceptar las escrituras corrientes que les entregaren los administradores del asiento, procedidas de los esclavos que se hubieren vendido fiados á los moradores de las Indias. Y quando estas escrituras no basten para la satisfaccion de estos derechos; se descontará lo que faltará en el pagamento de las doscientas mil patácas de anticipacion, y sus reditos.

7. Que en el pagamento de los derechos de los negros, que se vendieren en los puertos de Indias, se guardará sobre la entrega de ellos lo que está dispuesto en la condicion veinte y quatro.²⁸

²⁶ 1. "The petitioner takes upon him, with the said Royal Company of Guinea, and by virtue of their power, the carrying of negroes into the ports of the Indies, for the space of six years and eight months, to commence and be accounted from the day of the approbation of this agreement of assiento, and executing the writings, and that within the said term he will carry ten thousand tons, each ton to consist of three pieces of the Indies, of the regular measure of seven quarters [six feet], and that the same shall neither be old nor decrepit, according as is declared in the first article with Grillo, paying for each one of the said ten thousand tons, after the rate of one hundred and twelve pieces of eight and a half, in the same places and manner of payment, that Marin and Porcio obliged themselves to, and with the clauses and concessions made to Grillo, in the 3d article."

²⁷ 7. "Upon the arrival of any ship or ships at any port of the Indies, they oblige themselves to pay for every ton, regulated as before is expressed, one hundred and twelve pieces of eight and a half, in the same form of payment as is stipulated with Porcio and Marin: and for the farther explanation and certainty of this contract it is to be understood, that for the measurement of the tons, each is to be computed in three pieces of the Indies each of seven quarters, and for such as shall not be of that measure there shall be a proportionable allowance made so as to make it just and equal, the petitioner, and company or their factors, always being present at the measurements and visits, which are to be made and the said payments shall be made out of the first money arising by the sale of negroes in any of the said ports, your Majesty being pleased to order your officers, to whom it shall belong to make the visits, registers and measurements, that they do it immediately upon notice given to them by the factors of their arrival and requiring them to come and make their visit and regulate the tons, that by these means the inconvenience of the blacks lying long aboard may be avoided, after a tedious voyage, whereas they would hazard sickness and death by delays in disembarking, which that it may be done with the more convenience your Majesty will order that habitations, provisions, and other necessities be given them, without advance on the usual price, treating the persons that shall go in the ships, as factors with the same exemptions and privileges as your Majesty's own subjects enjoy."

²⁸ 24. "Your petitioners paying any sums of money into your Majesty's coffers at Lima, Mexico, or elsewhere, the same shall be made good on account of what shall

8. Que hallandose algunos navios en los puertos de Indias, que hayan llevado negros en la forma que les era permitido por la condicion sexta, y estando embargados ó detenidos por esta causa, seran desembargados, ó libertados; restituyendoseles todo lo que se les hubiere tomado en la forma de la condicion XI.²⁹

9. Que S. M. Católica se obliga á mandar pagar las doscientas mil patácas de la anticipacion que se le hizo, como tambien los reditos de ellas de ocho por ciento, en la forma que se declara en la condicion quarta:³⁰ los quales reditos se han de contar y devengar desde el dia en que se entregáron las doscientas mil patácas hasta aquel en que se pagaren en Castilla á la persona que tubiere los poderes necesarios para cobrarlas.

10. Que S. M. Católica mandará executar prontamente la condicion treinta y quatro³¹ del asiento sobre los bienes que quedaron de D. Bernardo Francisco Mariño para la satisfaccion de nuestra deuda, que en la misma condicion se declara.

become due for the duties on blacks according to the rates of tonnage agreed on; the said payments appearing by certificate from your royal officers, shall be discounted and allowed at the time of bringing in the blacks to the several ports assigned, and for this purpose two certificates shall be given of the same tenor and date; and a third shall not be given till it appear that the other has been lost by shipwreck or robbery at sea, and these certificates shall be taken up by the officers, where the payment is to be made and kept in a book that it may always remain and be evident."

²⁹ 11. "That the sixth article of the assiento of Don Nicolas Porcio shall be granted them, being verbatim as follows: Although it be already provided that for making up the complement of blacks for this assiento, bargains and agreements might be made with any nations so as they were not enemies to this crown, yet it shall be farther explained and declared, that the share or interest, of the persons with whom such bargain or contract shall be made, shall not at any time whatsoever [be confiscated, even though] upon any account or accident whatsoever that cannot be prevented, such as a declaration of war. In such case the agreements being six months before, the interest and credit made use of for said assiento shall not be liable to confiscation: the same shall be practiced with respect to the said company, in case a rupture should be between the two crowns (which God forbid), repaying them the sum which they shall have advanced, and allowing them one year to retire, and draw off the effects and proceeds of the said assiento, which shall be in dominions of your Majesty."

³⁰ 4. "With respect to the anticipation that is made of the two hundred thousand pieces of eight there shall be made good to them for the interest thereof, for the six years and eight months limited by this agreement, which sum for interest be it more or less, remain from this present time adjusted in sixty four thousand pieces of eight, the which with the principal shall remain unpaid, and to be deducted out of the dutys of the last years of this assiento: this sum of two hundred and sixty four thousand pieces of eight, being the amount of principal advanced and the interest calculated thereon, serving as an additional security for the performing the contract."

³¹ 34. "Whereas this company when they contracted with Don Bernardo Francisco Marin (upon whose account this assiento was), did assist him with money and a frigate to carry him to the Indies, the which does amount to twenty-seven thousand eight hundred pieces of eight, as appears by his bonds delivered in to the royal Council of the Indies, it is conditioned that your Majesty will be pleased to command that the company may be paid this debt, jointly with what is owing on account of the assiento by the aforesaid Marin out of the effects, or their produce, that is seized by your royal hazienda, or from the persons that stand security, satisfying your Majesty and this company share and share alike, pro rato according to what your Majesty and the company are creditors and in case the produce of said effects, or securitys are already recovered by your Majesty's ministers then shall be made good, to the company, what shall be their due, according as above is mentioned, in a concurrent sum to be carried to their credit in the second year of this adjustment, to which purpose your Majesty will be pleased, to despatch your order to the ministers that had the case of recovering this royal debt, that by the same methods they may recover that of the said company."

11. Que S. M. Católica dará trescientos mil cruzados de moneda portuguesa, que en este reyno vale 400 reis, á la compañía en satisfaccion de los daños recibidos, y de todas las acciones que la dicha compañía puede tener contra la hacienda de S. M. Católica por los dichos daños, ú otra qualquier causa, perteneciente al asiento de negros, pues de todas se da por pagado y satisfecho con la cantidad referida. Los quales trescientos mil cruzados serán pagados en Castilla en la venida de la primera flota, flotilla, ó galeones que llegaren; y de la misma manera las doscientas mil patácas de anticipacion, y sus reditos hasta la real entrega en la forma de la condicion tercera³² y quarta, serán pagadas en Castilla en las segundas embarcaciones que llegaren, siendo de la flota, flotilla, ó galeones: de suerte que este pagamento se haga en dos plazos subsecuentes en las primeras dos llegadas de galeones, flota, ó flotilla. Y todo este dinero de estos dos pagamentos se podrá traer á Portugal en moneda, ó barras de plata ó de oro.

12. Que S. M. de Portugal cede, en su nombre y en el de todos los interesados en la compañía, todas las acciones que le pertenecian y podian pertenecer contra la hacienda de S. M. Católica, conforme y de la misma manera que S. M. Católica cede todas las acciones que le competian, segun el articulo primero, con todas las cláusales y condiciones declaradas en él.

13. Que S. M. Católica mandará despachar inmediatamente las ordenes necesarias para la execucion de esta transaccion, de las quales mandará entregar un tanto á la compañía, para remitirle luego á Indias.

14. Que ambas Magestades estarán obligadas á cumplir y guardar enteramente lo ajustado en esta transaccion, como parte del tratado que se hace de nueva alianza, y á mandar despachar todas las ordenes necesarias, para que tenga su debido efecto. Y en caso que por alguna de las partes se falte á lo prometido, se tendrá por contravencion al dicho tratado, como si se faltase á lo que en él se contiene. Lisboa á 18 de junio de 1701.—ROUILLÉ.—El Marqués de ALEGRETE. El Conde de ALVOR. MENDO DE FOYOS PEREYRA.

La qual transaccion aqui escrita é inserta, habiendola yo visto y examinado, la apruebo, ratifico, y confirmo, y todas y cada una de las cosas en ella contenidas, y por la presente la doy por buena, firme, y valedera; prometiendo, en fé y palabra de Rey, observar y cumplir inviolablemente su forma y tenor, y hacerla cumplir y observar, sin permitir que se haga cosa alguna en contrario, directa ni indirectamente, en qualquier modo que ser pueda, renunciando todas las leyes, costumbres, y otras qualesquiera contrarias á ello. Y en testimonio de lo susodicho, y para su firmeza, mandé despachar la presente, firmada de mi mano, sellada con el sello secreto, y refrendada de mi infrascrito secretario de estado. Dada en Madrid á 1.º de julio de 1701.—YO EL REY.—D. JOSEPH PEREZ DE LA PUENTE.

TRANSLATION.

Don Philip the Fifth, by the grace of God king of the Spains, the Two Sicilies, Jerusalem, the Indies, etc., archduke of Austria, duke of Burgundy and of Milan, count of Hapsburg and of the Tyrol, etc.;

³² 3. "That for the greater service of your Majesty (notwithstanding as yet there has not been any example in any former assiento) they will anticipate two hundred thousand pieces of eight [in current money of] plate [*i. e.*, silver] or gold; *Vizt.* a hundred thousand pieces of eight part thereof within two months, to be accounted from the day that your Majesty shall approve of this proposal, and the hundred thousand pieces of eight remaining in two subsequent months of fifty thousand pieces of eight, each payment to be made at this court to the order of your Majesty."

Whereas there met by agreement at the court of Lisbon President Rouillé, ambassador extraordinary of his Most Christian Majesty in that court, armed with my powers, and Manuel Tellez de Silva, marquis of Alegrete, of his [the king of Portugal's] council of state, gentleman of his bedchamber, and inspector of his treasury; Francisco de Távora, count of Alvor, likewise of his council of state and president of the colonial office; and Mendo de Foyos Pereyra, member of his council and his secretary of state, armed with the powers of the very high and very mighty prince Dom Pedro, king of Portugal, my good brother and cousin; and whereas, by virtue of the said powers, an adjustment (*transacción*) between me and his Majesty of Portugal was arranged by them on June 18 of the present year, 1701, which, translated from Portuguese into Castilian, is as follows:

In the name of the Most Holy Trinity.

Whereas it was stipulated in the second article of the treaty of new alliance, and of guaranty of the will of Charles II., Catholic king of Spain, in the part relating to the succession of the very high and very powerful prince, Philip V., by the grace of God Catholic king of Spain, to all of Charles II.'s estates and dominions, concluded with the very high and very powerful prince, Pedro II., likewise by the grace of God king of Portugal, that all the damages caused to the Company of the Asiento for negroes for the Indies by the vexatious acts and lack of fidelity wherewith his Catholic Majesty's agents have fulfilled the conditions of the contract, be repaired, it has therefore seemed convenient to both their Majesties that an amicable adjustment should be made in separate articles of all the claims, actions, and pretensions, that might result to either sovereign and to those interested in the Company, from whatever cause, so as to avoid all possible risk of the two sovereigns being displeased by the bringing of law suits from which accusations and controversies might ensue, this matter, with everything depending upon it, being so accommodated that all occasions of offense or complaint shall cease by virtue of this adjustment.

For the conclusion and settlement of this adjustment, their Majesties have given full powers, *i. e.*, his Catholic Majesty, on his side, to Señor de Rouillé, president of the great council of his Most Christian Majesty, and his ambassador in this court of Lisbon; and his Majesty of Portugal, on his part, to the lords, Manuel Tellez da Silva, marquis of Alegrete, count of Villar-major, knight commander of the commanderies of São João of Alegrete, and the Lagares (oil-presses) de Soure, in the Order of Christ, and of São João of Moura and Santa Maria of Albufeira in the order of Aviz, member of the council of state, and gentleman of the bed chamber of his Majesty of Portugal, and inspector of his treasury; Francisco de Távora, count of Alvor, lord of the town of Moita, governor of Pinhel, and knight commander of the commanderies of Santo André de Freixeda, Porto Santo, Santa Maria das Duas Igrejas, and São Salvador de Basto, in the Order of Christ, member of the council of state, and president of Council for the Colonies; and to Senhor Mendo de Foyos Pereyra, knight commander of the commandery of Santa Maria of Massaón, in the Order of Christ, of the council of his Majesty of Portugal and his secretary of state. The said plenipotentiaries, by virtue of the powers given them, have solemnly concluded and amicably arranged between them the adjustment written below, containing fourteen separate articles, which are to keep their entire force and be observed as an inseparable

part of the said treaty of new alliance and guaranty, and any failure to fulfill and observe what is resolved and declared in the articles of this adjustment shall be considered a contravention of the said treaty.

1. That his Catholic Majesty renounces all the pretensions that he has and can have against the company of the assiento for negroes, to which he is or may be entitled on account of any causes, reasons, grounds, frauds, and violations that there may have been during the period when this contract was binding, His Catholic Majesty renouncing all of them, as though they had not been.

2. That his Catholic Majesty considers the contract of this assiento as nullified and terminated from the day on which the present adjustment is made, even though part of the period for which it was to be binding has not expired. And considering that in the interval necessarily required for his Catholic Majesty's orders for the publication of the adjustment to reach the Indies, some vessels carrying negroes in accordance with the provisions of this assiento in the manner described in the sixth condition, may have arrived at the Indies, the same practice shall be followed with respect to these vessels and to the sale of the negroes as if they had arrived at the time when the obligation of the contract subsisted. All their exemptions, liberties, and franchises, stipulated in the contract, shall be respected. And if there be any negroes that have been imported into the Indies because of the obligation of the assiento, and they be for sale, the provision of the twenty-eighth condition shall be observed with regard to them.

3. That his Catholic Majesty shall cause the administrator of the assiento, Gaspar de Andrade, to be set at complete liberty, as well as all the rest of the Portuguese who have served in the assiento, and who may be arrested or seized for any cause. They shall not be indebted (*obligado*) or distrained on because of fines or any costs incurred by reason or on occasion of their seizures or indictments (*procesos*). And all the papers, books, and effects taken, seized, or sequestrated, from Gaspar de Andrade, or any other persons whatsoever, shall be restored to those who shall present special powers from the company for this purpose. And orders shall be given that they, as well as their goods and chattels, derived from the effects of this company, may pass to this kingdom in Portuguese, Castilian, or French ships. The choice of ships is left to the said persons. If they take passage in Portuguese ships, they may come directly to the ports of Portugal in the fashion and manner accorded them at the time of the contract by the fifteenth condition. If they come in Castilian ships, they shall enjoy all that would have been permitted to them by the said condition if the contract had lasted; and the same concession shall be made them if they come in French ships to the ports of Castile and Portugal.

4. If there be any persons who have received effects of the company, and who are vassals of the crown of Portugal, the governors and any other magistrates shall oblige them to embark, if they are required by the attorneys (*procuradores*) of the company, and all the papers found belonging to the said company, the property and effects that they may possess, shall be restored to the company's commissioners in accordance with an inventory made judicially, in order that what shall have been found shall truly appear.

5. Notwithstanding that, by the first condition of the contract, the company was obliged to introduce into the Indies within the period of its duration 10,000 tons of negroes, regulated as expressed in the same and in the seventh condition, with the obligation of paying to his Catholic Majesty the duties

on the negroes that were lacking from the 10,000 tons to be introduced, just as if they had actually been sold and brought into the Indies, his Catholic Majesty, moved by considerations of justice, concedes to the company that it shall not pay duties except for the negroes that it has actually and completely introduced and sold into the Indies, counting the negroes by the ton as expressed in the said seventh condition.

6. That his Catholic Majesty shall cause the necessary orders to be despatched, so that within the period of two months precisely, all that is owed to the company in the Indies may be effectually recovered, and in the adjustment of the accounts of the duties on the negroes sold by the company in the Indies, the officers of his Catholic Majesty shall be obliged to accept the current notes which the administrators of the *assiento* shall deliver to them, proceeding from the slaves sold on credit to the inhabitants of the Indies. And if these notes do not suffice to acquit these duties the difference will be discounted in the payment of the 200,000 *patácas* paid in anticipation, and of the interest on them.

7. That in the payment of the duties for negroes that may be sold in the ports of the Indies, the provision of condition 24 shall be observed with respect to the delivery of them.

8. That if any ships are found in the ports of the Indies, having carried negroes as permitted them by condition 6, and being embargoed or detained on that account, they shall be released or liberated, and all that may have been taken from them shall be restored as expressed in condition 11.

9. That his Catholic Majesty binds himself to cause the payment of the 200,000 *patácas* advanced to him, as well as the interest on it at 8 per cent., in the manner expressed in condition 4. The interest is to be reckoned and collected from the day on which the 200,000 *patácas* were delivered, up to the day on which they shall be paid in Castile to the person having the powers necessary for receiving them.

10. That his Catholic Majesty shall cause the prompt execution of condition 34 of the *assiento*, in regard to the effects of Don Bernardo Francisco Marin, remaining for the satisfaction of our debt, mentioned in the said condition.

11. That his Catholic Majesty shall give to the company 300,000 *cruzados*, Portuguese money, each worth in this kingdom 400 *reis*, in satisfaction of the losses suffered, and of all the actions that the said company can have against his Catholic Majesty's treasury because of the said losses, or any other cause whatsoever pertaining to the *assiento* for negroes, inasmuch as these losses are all considered as paid and satisfied by the aforesaid sum. These 300,000 *cruzados* shall be paid in Castile upon the arrival of the first *flota*, *flotilla*, or *galleons*, that shall come. In the same way the 200,000 *patácas* paid in advance and the interest from it, until the actual delivery, as expressed in conditions 3 and 4, shall be paid in Castile upon the arrival of the second vessels that shall come, whether of the *flota*, *flotilla*, or *galleons*. So that this payment shall be made at two successive times, upon the first two arrivals of the *galleons*, *flota*, or *flotilla*. And all the money of these two payments may be transported to Portugal in money, or in *lingots* of silver or of gold.

12. That his Majesty of Portugal renounces, in his name and in that of all those interested in the company, all the actions that may or might pertain to him against the treasury of his Catholic Majesty, just as and in the same manner as his Catholic Majesty, according to the first article, with all the clauses and conditions stated therein, renounces all the actions to which he has claim.

13. That his Catholic Majesty shall cause to be dispatched at once the orders necessary for the execution of this adjustment; and will cause a copy of these orders to be delivered to the company for immediate remission to the Indies.

14. That both their Majesties shall be obliged to fulfill and observe completely that which is regulated in this adjustment as making part of the concluded treaty of new alliance, and to cause the dispatch of all the orders necessary for giving it due effect. And in case that what was promised in any of its parts, shall not be performed, this shall be considered as a contravention of the said treaty, as if the contents of that had not been observed. Lisbon, June 18, 1701.—ROUILLÉ.—The Marquis of ALEGRETE. The Count of ALVOR. MENDO DE FOYOS PEREYRA.

I, having seen and examined this adjustment here written and inserted, approve, ratify, and confirm it, and all and singular of the things therein contained, and by these presents I deliver it as good, firm, and valid, promising on the faith and ford of a king inviolably to observe and fulfill its form and tenor, and to cause it to be fulfilled and observed, without permitting anything to be done to the contrary, directly or indirectly, in any way whatever, renouncing all the laws and customs and any other things contrary thereto. And in testimony of the aforesaid, and in order to make it stable, I have ordered these presents to be despatched, signed by my hand, sealed with the secret seal, and countersigned by my undersigned secretary of state. Given in Madrid, July 1, 1701.—I THE KING.—D. JOSEPH PEREZ DE LA PUENTE.

Assiento for the introduction of negro slaves into Spanish America by the Royal Company of Guinea, established in France, made at Madrid, August 27, 1701. Ratified by the King of Spain, September 14, 1701. [Ratified by associates of the Company, October 31, 1701.]

INTRODUCTION.

Among the commercial advantages for France that Louis XIV. and his Secretary of the Navy, Pontchartrain, hoped to derive from the accession of the Duke of Anjou to the Spanish throne, was that of the *assiento*.¹ With this in view they had helped to bring about the adjustment of disputes between the Portuguese Guinea Company and the Spanish government and the relinquishment of the *assiento* by the former.² At first, fearing to wound the susceptibilities of the Portuguese or to incite the English and Dutch to begin a war, they concealed their purpose,³ but soon after the Portuguese-Spanish adjustment was signed the French government sent Admiral Ducasse to Madrid to negotiate the concession of the *assiento* to the Guinea Company of France.

For this mission Ducasse was eminently fitted. During twenty-five years, passed either in the service of the Company of Senegal or as an officer of the royal navy, and, for part of the latter period, as governor of Santo Domingo, he had striven to wrest the benefits of the slave trade from the English and Dutch and secure them for France.⁴ He aimed at making Santo Domingo a centre of this commerce, as Jamaica was for the English and Curaçao for the Dutch. On the west coast of Africa, at Surinam, and in the Caribbean he had led expeditions against the establishments of one or the other of the maritime powers, and he had submitted to his government plans for the ruin of their overseas trade.

Although in the negotiations respecting the *assiento* Ducasse in effect represented the French government, yet his powers, dated July 23, 1701, were conferred by the Royal Company of Guinea. This company had but just been created, in substitution for an older company of like name, for the purpose of taking over the *assiento*.⁵ It was also to supply slaves to the French

¹ G. Scelle, *La Traite Négrière*, II. 122 ff.

² See above, Docs. 87 and 88.

³ Scelle, *op. cit.*, pp. 125 ff.

⁴ Baron Robert du Casse, *L'Amiral du Casse* (1876), chs. 1-5; Scelle, *op. cit.*, II. 127-129.

⁵ *Ibid.*, II. 197, 198, 687.

Antilles—the market of its predecessor. Its organization as well as its purpose was to be twofold. Organized as assientists for the Spanish-American trade, its members were to have a separate capital, and to include among them the kings of France and Spain, who however would have no interest in the trade with the Antilles.⁶

Within a fortnight after the arrival of Ducasse at Madrid his task was accomplished. Haste was requisite, for Philip V. was about to start on a journey toward the northeastern frontier of Spain to meet his bride. The French ambassador had prepared the way for Ducasse, and Cardinal Portocarrero and the Secretary of State (*secretario del despacho*), Don Antonio Ubilla, favored Ducasse's aims. The matter was at first withheld from the Council of the Indies, hostile as it was, on the whole, to the French.⁷ Two commissioners were appointed to adjust terms rapidly and secretly with Ducasse, who presented articles, or "conditions", in the form of a proposal under date of August 27, 1701. The commissioners inserted modifications (*allanamientos*) at the end of some of the conditions, and on August 30 the document was referred to the Council of the Indies, which was allowed two days for commenting upon it. It was four weeks before the council rendered its opinion, and meanwhile, on September 14, King Philip, on his way to Figueras, had signed the *assiento* at Daroca.⁸ Louis XIV. approved it on October 28,⁹ and it was ratified by associates of the company on October 31, 1701.¹⁰

The *assiento*, reinforced by *cédulas* issued later by the King of Spain,¹¹ gave the Company of Guinea the sole right to introduce negro slaves into Spanish America during the ten years following May 1, 1702, excluding from the trade Spanish as well as foreign rivals.¹² The company engaged to furnish, in time of peace, 4800 pieces of the Indies¹³ yearly, for the period of the contract, paying, from six months to six months, an annual duty of 33½ silver crowns on each of 4000 pieces, whether so many were actually introduced or not.¹⁴ In case of war the company need import only 3000 yearly; but whether brought in, or not, the duty was to be paid on that number. Deficiencies in respect to the numbers introduced might be made up subsequent importations.¹⁵ As to other financial aspects of the treaty, the company was to advance to the King of Spain 200,000 pesos within four months, not to be recovered—from the import duties and the king's share of the profits—until the last two years of the *assiento*.¹⁶ Each of the royal assientists was

⁶ Scelle, *op. cit.*, II. 199.

⁷ *Ibid.*, pp. 147, 148, 219, 220.

⁸ *Ibid.*, pp. 129-133, 197; Schonenberg to Vernon, Madrid, Sept. 7, 1701, P. R. O., St. Pap. For., Spain, no. 75.

⁹ Scelle, *op. cit.*, II. 135.

¹⁰ *Ibid.*, p. 140.

¹¹ *Ibid.*, p. 302.

¹² Arts. 18, 19.

¹³ For a definition of this term see above, Doc. 88, note 5.

¹⁴ Arts. 1, 2, 5, 7.

¹⁵ Art. 6.

¹⁶ Art. 3.

to subscribe one-fourth of the capital of 1,366,000 pesos. But if the King of Spain was not ready to do this, the company would advance the amount at 8 per cent. interest.¹⁷ The company might transport its cargoes in French or Spanish ships, or in those of friendly nations, provided that the commander and crew were Roman Catholics.¹⁸ It might employ nationals of both countries for the conduct of the company's business in America. For purposes of the *assiento* Frenchmen were to be treated as though they were Spanish subjects.¹⁹ A new and important concession allowed the company to bring negroes to all the Atlantic ports of Spanish America, even including Buenos Aires.²⁰ Another innovation was the permission granted the company to charter ships on the Pacific coast for the purpose of introducing slaves into the provinces of Peru.²¹ Moreover, its ships might sail from French or Spanish ports, and it might load its return cargoes on ships belonging to the *flota* or galleons,²² and might bring these returns directly to France or Spain, carrying back reals, bars of silver, and ingots of gold, as well as produce of the country, if acquired from the sale of negroes.²³ While some of the above stipulations appeared to give opportunity for illicit commerce on the part of the French, other clauses attempted to provide against contraband trade.²⁴ Vexatious or hostile treatment of the company by Spanish officials in America was also forbidden.²⁵ For the period of the *assiento* the King of Spain dispensed with all laws contrary thereto.²⁶

Despite the concessions and precautions of the *assiento*, the company had a troubled and, on the whole, unfortunate history, due in considerable part to the ill-will and lack of co-operation of the Spanish administration in Spain and in America.²⁷ In particular the *assiento* failed of its purpose of destroying English and Dutch trade with the Spanish-American colonies. It was even obliged to turn to these rivals for aid in furnishing slaves,²⁸ and was unable to prevent them from carrying on an illicit commerce in negroes and other merchandize, with which the Spanish officials often connived.²⁹

BIBLIOGRAPHY.

Text: MS. [The ratification by the King of Spain seems not to be in the French archives; the French text in the Archives Nationales, F 2a, 7, is a copy made late in the eighteenth century, apparently by Moreau de St. Méry. Neither can an original manuscript of the ratification by the French company be found in the archives of Spain, so far as appears after

¹⁷ Art. 28.

¹⁸ Art. 8.

¹⁹ Art. 12.

²⁰ Arts. 9, 10.

²¹ Art. 11.

²² Art. 17.

²³ Arts. 22, 25, 26.

²⁴ Art. 22.

²⁵ Arts. 14, 15.

²⁶ Art. 34.

²⁷ Scelle, *op. cit.*, II. 162, 172, *et passim*.

²⁸ *Ibid.*, II. 285-293, 299.

²⁹ *Ibid.*, II. 159 ff., 308-334, 340, 411, 412.

diligent searches. The text used may however be regarded as authoritative. It is taken from a printed pamphlet, *Assiento ajustado entre las dos Magestades, Catholica y Christianissima, con la Compañia Real de Guinea, establecido en el Reyno de Francia*, etc. It bears in print, except that the words *quince dias del mes* and the signature are in handwriting, the following certification: "Yo Don Diego Fernandez Piñeyro, Secretario del Rey y su Escrivano de Camara, la hizo imprimir por mandado de los Señores del Real y Supremo Consejo de las Indias, y va cierta y verdadera esta Escripura de Assiento, y la de su ratificacion, otorgada en Francia, que uno y otro original queda en la Escrivania de Camara del Consejo, que está á mi cargo, y á que me remito, de que certifico; y para que conste, lo firmé. En Madrid á quince dias del mes de Diziembre de mil setecientos y un años. *Diego de Piñeyro*". The pamphlet was found in the library of the Real Academia de Historia, in Madrid, its designation being "Papeles Varios de Indias", estante 26, grado 4, número 88. J. F. J.]

Text: Printed. A. del Cantillo, *Tratados de Paz y de Comercio* (1843), pp. 35-43; C. Calvo, *Recueil des Traités* (1862-1866), II. 61-77.

References: **Contemporary and early writings.** C. Hippeau, *Avénement des Bourbons au Trône d'Espagne* (1875), II. 308, 424.

References: **Later writings.** G. Scelle, *La Traite Nègrière* (1906), II. 121-450; L. Peytraud, *L'Esclavage aux Antilles Françaises avant 1789* (1897), pp. 52-57; Baron Robert du Casse, *L'Amiral du Casse* (1876), pp. 239-249; P. Bonnassieux, *Les Grands Compagnies de Commerce* (1892), pp. 386-391.

TEXT.³⁰

EL REY. Por quanto aviendo terminado el Assiento de Negros, con motivo de el ultimo tratado ajustado entre esta corona y la de Francia, con Portugal,³¹ conviene embarçar desde luego por todos medios la introduccion de negros en los reynos de las Indias por las naciones estrangeras,³² y porque deseando entrar en esta dependencia la Compañia Real de Guinea, establecida en Francia, otorgaron poder los directores y otros interesados en ella a Monsiur Ducase, cavallero de el Orden de San Luis, cabo de esquadra de las armadas navales de el señor Rey Christianissimo, mi abuelo, en Paris, á veinte y tres de Julio de este presente año, para tratar y ajustar nuevo Assiento de introduccion de esclavos negros en las Indias; en cuya virtud dió pliego el referido Monsiur Ducase, por sí y en nombre de la dicha Real Compañia de Guinea, obligandose á encargarse de este Assiento por diez años, que empesaran á correr en primero de Mayo de el que viene de mil setecientos y dos, y á introducir en ellos quarenta y ocho mil piezas de Indias, de ambos sexos, senalada y repartidamente, quatro mil y ochocientos en cada uno de los diez años, con

³⁰ The text is taken from the printed pamphlet described under Bibliography, above.

³¹ The annulment of the Portuguese assiento is provided for, not by the Spanish-Portuguese treaty itself (Doc. 87) but by the second article of the adjustment (*transacción*) of the assiento, signed on the same day as the treaty (Doc. 88).

³² The English and Dutch are of course especially referred to. Rouillé, the ambassador of France at Lisbon, reported in 1698 that the English envoy there was trying to persuade the Portuguese government to allow London merchants to supply negroes for Spanish America, and even thought of substituting an English company for the Portuguese assientists, *i. e.*, the Royal Company of Guinea, otherwise known as the Company of Cacheu. Scelle, *op. cit.*, II. 118, 119. The slave trade carried on by the Scots established at Darien seemed further evidence of British intentions. Cf. above, Doc. 88, Introduction, p. 40.

diferentes condiciones, sobre las cuales me consultó mi Consejo de las Indias, y en vista de ello he tenido por bien admitir y aprobar el pliego expressado (que consta de treinta y quatro condiciones, con los allanamientos que en algunas de ellas van puestos por Monsiur Ducase) el qual es de el tenor siguiente:

1. La referida Compañia, establecida en Francia, con permission de sus Magestades Catholica y Christianissima, para encargarse de el Assiento, y introduccion de esclavos negros en las Indias Occidentales de la America pertenecientes á su Magestad Catholica, y establecer una loable, pura, mutua, y reciproca utilidad de sus Magestades, y de los vassallos de una y otra corona, ofrece y se obliga, por sí, sus directores y individuos, á encargarse de introducir en las referidas Indias Occidentales de su Magestad Catholica, en tiempo de diez años, que empezaran á correr en primero de Mayo proximo venidero de mil setecientos y dos, y acabaran otro tal día de el año de mil setecientos y doze, es á saber: quarenta y ocho mil piezas de Indias de ambos sexos y de rodas edades, que no sean de Minas, ni de Caboverde,³³ como poco á proposito para aquellos reynos, senalada y repartidamente quatro mil y ochocientas en cada uno de los dichos diez años.

2. Por cada pieza de Indias de la medida regular de aquellas provincias,³⁴ en que ha de practicarse para la paga de los derechos, lo hasta aqui establecido y estilado, pagará la Compañia treinta y tres escudos y un tercio de otro de plata de el valor de tres libras torneses, moneda de Francia, que es lo mismo que treinta y tres pesos escudos y un tercio de otro de estos reynos;³⁵ en cuya cantidad se han de incluir y comprehender (como quedan comprehendidos) todos los derechos de entrada y regalía que á su Magestad Catholica pertenecen, sin poderse pedir otra cosa alguna.

3. La dicha Compañia anticipará á su Magestad Catholica, para ocurrir á las urgencias presentes, seisientas mil libras torneses, moneda de Francia, y por ellas ducientos mil pesos escudos, en dos pagas iguales de á trecientas mil libras ó cien mil pesos cada una; la primera dos meses despues de estar aprobado y firmado por su Magestad este Assiento; y la segunda otros dos meses despues de la primera. Cuya cantidad no ha de poder reembolsar la dicha Compañia, hasta los dos ultimos años de este assiento, que lo podrá hazer, assi de los derechos de la introduccion, como de las ganancias que á su Magestad Catholica pertenecieren, segun adelante se dirá.

4. Será de la obligacion de la Compañia entregar la cantidad expressada, en esta corte ú en la de Paris, á eleccion de su Magestad Catholica; y en la misma conformidad deberá y se obligará satisfacer lo correspondiente á los derechos expressados de la introduccion, sin embargo de que su obligacion era pagarlos en Indias, para que su Magestad Catholica reciba esta mayor conveniencia.

³³ The company soon asked for the abrogation of this hampering provision. The Council of the Indies at first refused, since these negroes were said to be "fort barbares, pleins d'orgueil, rebelles aux enseignements de la religion catholique, anthropophages, pillards et révoltés". In 1708 however permission was granted the company to carry these negroes to the Indies, provided that they were employed in the fields and did not stay in the towns and ports. Scelle, *op. cit.*, II. 294-298.

³⁴ The first article of the Portuguese assiento of 1696 defined the regular measure as seven quarters (six feet). See above, p. 44, note 26.

³⁵ These duties are not quite so high as those provided for by the first article of the assiento of 1696, whereby a ton of negroes, consisting of three pieces of the Indies, was to pay a duty of 112½ pieces of eight. See above, p. 44, note 26.

5. Las pagas de los derechos se executarán de seis en seis meses, empezando desde el primero de Noviembre de el año proximo futuro, y prosiguiendo successivamente hasta el fin de este contrato, sin disputa, atraso, ni interpretacion alguna; con advertencia y declaracion de que deberá satisfacer los derechos pertenecientes á las quatro mil piezas de Indias, y no los de las ochocientas restantes, porque de estas en todo el curso y progreso de este assiento le ha de hazer y haze su Magestad gracia, donacion, y liberacion en forma, por los intereses y riesgos que debian bonificarse á la Compañia, pagando y anticipando las cantidades expressadas, en esta corte ó la de Paris, como queda dicho; cuyo medio, sobre ser util á la real hacienda de su Magestad Catholica, facilita y da claridad á la cuenta de este negocio.

6. Rezelando que sobreviniendo la guerra se ha de embarazar sumamente la dicha introduccion de esclavos negros en las Indias, exponiendose la Compañia al peligro de perder sus embarcaciones y armazones, se declara que todo el tiempo que durare, no será obligada á introducir mas que tres mil piezas de Indias cada año, quedandose con el derecho de poder llenar y introducir la cantidad de las mil y ochocientas restantes, cumplimiento á las quatro mil y ochocientas de la permission, en los años successivos; y si por algun accidente, aun no puidiere cumplir el numero de las tres mil piezas de Indias, le ha de quedar el propio derecho, constando las que huviere dexado de introducir; pero no por esto dexará de satisfacer las trecientas mil libras torneses, ó cien mil pesos escudos, que importan los derechos de las dichas tres mil piezas de Indias, de seis en seis meses en cada uno de los años que duraré la guerra; antes bien, siempre, que constaré aver introduzido mas de las dichas tres mil piezas, lo satisfará puntualmente en la forma expressada.

En esta condicion ay el allanamiento siguiente: Me allano, ó que si durante los diez años no cessaré la guerra, y por ello dexaré de introducir al principio, al medio, ó al fin de este tiempo los negros prescriptos en la obligacion de este contrato, pagaré todos los derechos; pero podré introducir los negros que faltaren en los tres años, que se conceden para dar las quantas, y recoger los efectos que de este assiento resultaren, sin estar entonces obligado á pagar otros derechos algunos.³⁶

7. Tambien se declara que aunque la paz permanezca, no será obligada la Compañia rigurosamente á introducir las quatro mil y ochocientas piezas de Indias en cada un año, por los varios accidentes, riesgos, y contingencias que suelen experimentarse; y que le ha de quedar el derecho y accion de cumplir en el año ó años siguientes de este contrato, las que huviere dexado de introducir, pagando empero la entera cantidad correspondiente á los derechos de las quatro mil piezas de Indias, como si las huviesse introduzido de seis en seis meses, segun queda expressado.

8. La conduccion de sus armazones, la hará la Compañia en navios de su Magestad Christianissima, ó suyos propios, ó bien de Españoles, si le tuviere quenta, tripulados de vassallos de la corona de Francia, ó de los de su Magestad Catholica, á su eleccion; y en caso de admitir otros algunos por falta de gente (aunque se presume remoto) serán todos Catholicos Romanos; y juntamente ha de ser lícito y poder la dicha Compañia introducir los esclavos negros de la obligacion de este assiento en los dichos puertos de el Mar del Norte, en qualesquiera navios de las naciones amigas de esta corona, segun se ha concedido á otros assentistas; pero siempre debaxo de la precisa con-

³⁶ The Council of the Indies was opposed to this virtual extension of the contract. Scelle, *op. cit.*, II. 419.

dicion de que assi el comandante, como la gente de la tripulacion de dichos navios, han de ser Catholicos Romanos.³⁷

9. Por los graves inconvenientes que resultan de que la introduccion de esclavos negros no se haga en todos los puertos de las Indias, quando es cierto que las provincias que de ellos carecen experimentan grandes miserias por falta de cultura y beneficio en sus haciendas y possessions, de que resulta un conocido perjuizio y atraso al real patrimonio de su Magestad Catholica, y los dispendios y fraudes que se cometen por adquirir algunos negros: Es condicion de este contracto, que la dicha Compañia podrá introducir y comerciar las dichas piezas de Indias en todos los puertos de ellas de la parte del norte, á su eleccion, dispensando su Magestad Catholica (como dispensa) la limitacion hasta aqui establecida, para que solo entrassen en los puertos señalados por los assientos precedentes;³⁸ pero es declaracion, no han de entrar ni desembarcar negro alguno en el que no huviere oficiales reales,³⁹ que puedan visitar los navios ó embarcaciones, y dar certificacion de los negros que se introduxeren. Y assimismo se declara que los que se llevaren á los puertos de las Islas de Varlovento, Santa Marta, Cumaná, y Maracaybo, no ha de poder la Compañia venderlos mas que á razon de trecientos pesos cada uno, y de aqui abaxo á lo que pudiere, para que aquellos naturales y habitantes puedan costearlos y comprarlos; con advertencia de que en los demas puertos de Nueva-España y Tierra-Firme será lícito á la Compañia ajustar los precios á como mejor le estuviere.

10. Teniendo la libertad de introducir negros en todos los puertos de la America, de la Vanda del Norte, por la razon expressada, queda dicho, lo ha de poder hazer en el de Buenos Ayres, conduciendo á el en cada un año de los de este asiento dos navios ó embarcaciones, capaces de llevar de setecientas á ochocientas piezas de Indias de ambos sexos, para venderlas allí como pudiere y ajustare, de que se seguira universal beneficio á aquellas provincias; pero si excediere de este numero, no ha de poder vender ni desembarcar los demas que llevare, ni el governador y oficiales reales lo han de permitir, con ninguna causa, pretexto, ni motivo, por urgente que sea. Esta condicion tiene el allanamiento que se sigue: Allanome á que en lugar de introducir en Buenos Ayres, en cada un año, de setecientos á ochocientos negros, se limite la permission de quinientos á seiscientos.⁴⁰

11. Para conducir y introducir los esclavos negros en las provincias de el Perú, se ha de conceder y concede permission á la Compañia de comprar ó fabricar en cambio de negros, ó en otra forma, en Panamá ú otro astillero ó puerto del Mar del Sur, dos navios fragatas ó urcas de á quatrocientas toneladas,⁴¹ poco mas ó menos, en que poder embarcarlos desde Panamá

³⁷ The provisions of this article implicitly prohibited the company from supplying itself with negroes from the English and Dutch. In 1706 however this was allowed, and the company was even authorized to establish a regular service between Santo Domingo and Curaçao. Scelle, *op. cit.*, II. 285-294.

³⁸ On the ground that it would encourage interloping, the Council of the Indies objected to this admission of the company into all ports on the Atlantic coast. *Ibid.*, II. 337, 338. Previously the number of ports open to the assientists had been restricted, as, *c. g.*, by article VI. of the Portuguese asiento, printed above, Doc. 88, note 23.

³⁹ *Oficiales reales* were the officers of the royal exchequer—treasurer, contador, and factor—residing in each of the chief cities of Spanish America. C. H. Haring, *Trade and Navigation between Spain and the Indies* (1918), p. 88.

⁴⁰ The Council of the Indies opposed the admission of the company to Buenos Aires. Scelle, *op. cit.*, II. 337, 338.

⁴¹ A Castilian ton, or *tonelada*, equalled twenty quintals or hundredweight, estimated to represent a space of somewhat more than 56 cubic feet in Spanish vessels of this time. Haring, *op. cit.*, p. 284.

al Perú, y retornar el producto de la venta dellos en frutos de la tierra, reales, varras de plata, y tejos de oro; y siendo quintados⁴² y sin fraude, no se le podrá obligar á pagar derechos algunos por lo que toca á la plata y oro, que en reales, varras, ó tejos conduxeren, tanto de entrada quanto de salida; porque han de ser libres, como lo serian y deberian ser, si perteneciesen á su Magestad Catholica los dichos reales, varras, y tejos de oro: y assimismo se permite á la dicha Compañia, pueda embiar de Europa por Portovelo, y passar á Panamá la jarcia, lona, fierro, y otros pertrechos necessarios para la construccion y fabrica de los dichos dos baxeles, urcas, ó fragatas, y su manutencion tan solamente, porque si vendiere ó comerciare los dichos pertrechos, en todo en parte, con el pretexto de no averlos menester, ú otro alguno, se han de dar por perdidos, y castigar como fuere de justicia á los compradores y vendedores, quedando por el mismo hecho de allí adelante derogada y prohibida absolutamente esta permission: y se advierte que cumplido este assiento, no podrá la dicha Compañia usar de las dos referidas fragatas, urcas, ó navios, ni transportarlos á la Europa, desembocando los Estrechos, por los inconvenientes que esto podria ocasionar, antes será obligada á venderlos, enagenarlos, ó donarlos, como mejor le pareciere, en el termino de seis meses successivos al fin de este contracto.

Esta condicion está con el allanamiento siguiente: Me allano á que fletaré navios para transportar los negros á las provincias de el Perú, tripulandolos y guarneciendolos á voluntad de la Compañia, nombrando los oficiales de mar y guerra; y pudiendo llevar los pertrechos de Europa que fueren necessarios para mantener los baxeles ó embarcaciones que fletaré.⁴³

12. Podrá la dicha Compañia valerse de Franceses ó Espanoles á su eleccion, para el manejo de este negocio, assi en los puertos de la America como en los demas lugares de la tierra adentro, derogando su Magestad Catholica las leyes que prohiben esta entrada á los estrangeros; y declarando, queriendo, y mandando que los Franceses sean tratados, durante este assiento, como si fuesen vassallos Espanoles, para este caso meramente; y se previene que en ningun puerto de las Indias podrá aver mas que de quatro á seis Franceses, de los quales passaran la tierra adentro los que huviere menester la Compañia para el manejo y recaudacion de esta dependencia, que ha de governar la dicha Compañia en la forma, segun y como le pareciere y mejor le estuviere, sin que ningun ministro ni oficial real, politico, ó militar, de qualquier grado y calidad que sea, pueda embarazarlo debaxo de ningun pretexto, sino se opusiere lo que se intentare á las leyes establecidas, ni á lo capitulado en este assiento.

13. Podrá nombrar la Compañia en todos los puertos ó lugares principales de la America juezes conservadores, que no sean oficiales reales, por estarles prohibido, y sean vassallos de su Magestad Catholica, de grado y calidad que merezcan y tengan su real aprobacion;⁴⁴ y á estos se ha de conceder el privativo conocimiento de todas las causas, negocios, y dependencias de este assiento con plena autoridad, facultad, jurisdiccion, y inhibicion de audiencias, ministros, y tribunales, presidentes, capitanes generales, gobernadores, corregidores, alcaldes mayores, y otros qualesquiera juezes y justicias en que han de ser comprehendidos hasta los mismos virreyes de aquellos reynos:

⁴² The quinto was the twenty per cent. royalty on bullion, paid for the privilege of exploiting the mines. Haring, *op. cit.*, p. 156.

⁴³ The Council of the Indies objected to this article, even after its important modification by the commissioners. Scelle, *op. cit.* II. 341.

⁴⁴ The Council of the Indies maintained that the company had merely the right of proposing judges to be nominated by the president of the council. *Ibid.*

porque solo han de conocer de estas causas y sus incidencias los mencionados jueces conservadores, otorgando las apelaciones en los casos, por derecho permitido para el Real y Supremo Consejo de las Indias; y juntamente le ha de conceder y concede su Magestad Catholica que el presidente que es ó fuere de dicho Consejo, ó la persona que le governare, sea protector de este assiento; y que demas de esto, la Compañia pueda proponer un ministro del mismo Supremo Consejo de las Indias, para que su Magestad le apruebe, y sea su juez conservador privativo, segun uno y otro se ha executado y practicado en los assientos antecedentes.

14. Tampoco podrán los virreyes, audiencias, presidentes, capitanes generales, gobernadores, oficiales reales, ni otro ministro alguno embargar ni detener los navios de este assiento, ni armarlos de guerra, ni con otro pretexto, causa, ó motivo impedirle su viage; antes bien, serán obligados á darles y hazerles dar todo el socorro y asistencia que les pidieren para su mas prompto despacho, y los viveres y cosas de que necessitaren á los precios corrientes, pena de aver de dar quenta y satisfacer por si propios los perjuizos que se ocasionaren á la Compañia por la detencion de los dichos baxeles.

15. No podrán tampoco los referidos virreyes, presidentes, capitanes generales, gobernadores, corregidores, alcaldes mayores, jueces, y oficiales reales, ni otro ministro, ni oficial alguno, tomar, sacar, aprehender, ni embargar, con violencia, debaxo de ningun pretexto, causa, ni motivo por urgente que sea, bienes ni efectos ningunos de este assiento ni de la dicha Compañia, pena de que serán castigados y daran quenta y satisfaccion del perjuizio que ocasionaren.

16. Será permitido á la Compañia y sus factores en Indias tener en su servicio los marineros, arrieros, y oficiales de carga y descarga de que necesitaren, ajustandose con ellos, lisa y voluntariamente, y satisfaciendoles los salarios, precios, ó estipendios que huvieren convenido.

17. Podrá la dicha Compañia á su eleccion cargar sus retornos sobre los navios de flotas ó galeones, ajustandose con los capitanes y dueños de dichos navios ó sobre los propios de este assiento; y estos podrán venir de conserva, si les pareciere, con flotas y galeones ú otros navios de guerra de su Magestad Catholica, que ha de dignarse ordenar á unos y otros que precisamente los admitan y traygan debaxo de su salvaguardia.⁴⁵

18. Es condicion, que desde el primer dia de Mayo del año proximo futuro de mil setecientos y dos, hasta que se tome la possession de este assiento, ni despues de averse tomado, la Compañia de Portugal ni otra persona alguna podrán introducir ningun esclavo negro; y si lo hizieren, su Magestad Catholica, desde luego, los ha de declarar (como declara) por perdidos y confiscados, á favor y en beneficio de este assiento y Compañia, pagandose por ella los derechos, que de los negros que se hallaren contra el tenor de este capitulo introduzidos pertenecieren á su real hazienda, en la forma que está mandado y establecido.⁴⁶

19. Assimismo es condicion precisa de este assiento y contracto, que solo la dicha Compañia, sus factores, y apoderados han de poder navegar y introducir los referidos esclavos negros en los puertos del Norte de las Indias Occidentales de su Magestad Catholica, quedando los demas vassallos y estrangeros de la corona privados de esta provision y introduccion, debaxo de

⁴⁵ For the Spanish government's interpretation of this article see Scelle, *op. cit.*, II. 348 ff.

⁴⁶ For an account of the contraband trade in negroes during the period of this assiento see *ibid.*, pp. 302-327.

las penas por leyes establecidas; y su Magestad Catholica en obligacion de mantener (como lo ofrece debaxo de su fee y palabra real) á la dicha Compañia en la entera possession y observancia de este contracto, por el tiempo que se capitula, sin permitir ni dissimular cosa alguna que se oponga á su buena fee y al exacto cumplimiento de sus articulos y condiciones, por ser esto tan propio de su real justificacion y tan importante á su servicio.

20. Y si sucediesse algun caso, que por esta causa ú otra turbasse ó inquietasse las acciones y derechos de la dicha Compañia, y la motivasse algun pleyto o pleytos: Es condicion, que su Magestad Catholica ha de reservar en sí solo el conocimiento de ellos, inhibiendo á todos y qualesquier jueces y justicias de conocer y proceder en los dichos pleytos y causas.⁴⁷

21. Los navios de este trafico y assiento, luego que lleguen á los puertos de las Indias con sus armazones de negros, han de justificar la sanidad, para que el governador y oficiales reales los permitan la entrada, que no podrán hazer en otra forma.⁴⁸

22. Aviendo surgido y dado fondo en qualquiera de los puertos han de ser visitados por el governador y oficiales reales, y desembarcando los negros en todo ó en parte, podrán juntamente desembarcar los bastimentos que para su sustento conduxeren, poniendolos en alguna casa ó almagacen, separados y con registro y conocimiento de dichos oficiales reales, á fin de que se eviten fraudes y embarazos; pero no podrán ni han de poder desembarcar, introducir, ni vender ningunas ropas, generos, y facturas, debaxo de ninguna simulacion ni motivo por grave que sea, ni comerciar ni vender otra cosa que no fuere los dichos esclavos negros, pena de la vida al que lo executare; y á los ministros, vassallos, y subditos de su Magestad Catholica, que en su permission fueren culpados: porque esto ha de ser (como lo es) absolutamente prohibido, y contra la intencion, direccion, y buena fee de dicha Compañia, como opuesto á las leyes de estos reynos: y es declaracion, que las cosas que en esta forma se aprehendieren por ser de illicito y negado comercio se tassén y aprecien, y quemandose luego incontinenti en parte publica de orden de los dichos governador y oficiales reales, para que sirva de exemplo, se condene al capitan y maestre de el dicho navio ó embarcacion (sino fueren comprehendidos en el delicto) á satisfacer lo que importaren en pena de la omission, que en reconocerlo y embarazarlo huvieren tenido; y que si fueren complices ó delinquentes principales en esto, sean condenados á muerte; y executada la sentencia, sin admitirles escusa ni apelacion que pueda suspenderla ni dilatarla, executandose lo propio, con los demas que se hallaren reos y complices en este delicto, precisa é inviolablemente, para que á vista de el castigo se assegure el escarmiento, y no se toleren ni cometan semejantes fraudulentas introducciones, de cuyo exacto y puntual cumplimiento pedirá su Magestad Catholica rigurosa cuenta á todos sus ministros y oficiales; pero no por lo dicho se dará por perdida la armazon de negros, ni el baxel ó embarcacion en que fueren; como ni tampoco los bastimentos que para su consumo y sustentacion se llevaren; pues esto como inculpado ha de quedar libre y proseguir su negociacion la persona á quien tocara en la forma declarada y permitida; ni tampoco sera condenado, y executada la pena de muerte, en ninguno que vendiere ó comerciare generos ó ropas, cuyo valor no llegue á cien pesos escudos; porque en este caso será suficiente (como su Magestad Catholica lo ha de mandar y manda) que aprehendida, apreciada, y quemada

⁴⁷ The Council of the Indies protested against the provisions of this article. Scelle, *op. cit.*, II. 223 ff.

⁴⁸ On this article see *ibid.*, pp. 343, 344.

la ropa que se cogiere (en que no ha de aver dispensacion alguna) se condene y cobre de el capitan y maestre la cantidad que importare, en pena de su descuydo y omission, segun queda insignuada.

Esta condicion está con el allanamiento siguiente: Me allano á que se les admita la apelacion, segun y como lo previene el Supremo Consejo de las Indias. El Consejo previno en esta condicion, que podia seguirse, executandose la pena de muerte, como se proponia, sin admitir recurso de apelacion limitadamente en los casos que permite el derecho.⁴⁹

23. Por los bastimentos que desembarcaren tan solamente para el sustento de los negros, no deberán pagar derechos de entrada ni salida, ni otros algunos; pero de los que compraren y sacaren de los puertos, avran de pagar los que estuvieren establecidos, como los vassallos de su Magestad Catholica.

24. Causandose los derechos de la introduccion y inmission de las piezas de Indias, desde el dia de su desembarco en qualquiera de los puertos de aquellos reynos, se ha de declarar (segun se declara y es de justicia) que aunque se muera alguno ó algunos de los negros, desembarcados antes de venderse, no por esso ha de pretender la Compañia dexar de pagar los derechos de los que murieren, segun la regulacion y obligacion expressada, ni introducir sobre esto pretension alguna.⁵⁰

25. Vendidos los negros que se ajustaren en qualquier puerto, se podran passar á otros los que les quedaren, y tomar en satisfaccion de los que vendieren, reales, varras de plata, y tejos de oro, siendo quintados y sin fraude, y generos y fructos de la tierra, y sacar libremente de qualquiera de los puertos los reales, plata, y oro, que recibieren por esta causa libremente y sin pagar derechos; porque de los generos y fructos han de satisfacer los que estuvieren establecidos, segun la parte de donde los estraxeren; y se les permite, que si vendieren ó cambiaren algunos negros en fructos de la tierra, de qualquier especie y calidad que sean, por no aver reales donde los vendieren, los puedan transportar con sus armazones á otros puertos y venderlos en ellos, pagando los derechos acostumbrados.

Esta condicion se halla con el allanamiento siguiente: Me allano á que los fructos que passare de un puerto á otro, como procedidos de la venta de negros, no los he de poder vender la tierra adentro.

26. Es expressa condicion de este contracto, que los dichos navios de este trafico y assiento podran salir de los puertos de Francia ó España á su eleccion, dando noticia de su partença á su Magestad Catholica, y bolver con los reales, plata, oro, y fructos que adquirieren y cobraren de la venta de sus armazones á puertos de Francia ó España á su eleccion; con declaracion de que viniendo á los de España entregaran su registro á los ministros de su Magestad, para que conste lo que conducen; y llegando á los de Francia, embiaran relacion de ello, á fin de que su Magestad se halle enterado de todo; pero no podrá traer ningun navio, reales, plata, oro, ni fructos que no sean adquiridos del producto de este assiento y precio de las piezas de Indias que vendieren, ni cosa alguna de caudales, ni encomiendas de particulares de aquellos reynos; porque desde luego para siempre, que se averiguare, quiere la Compañia, se dé (como se ha de dar) por de commiso, á favor de la real hazienda de su Magestad Catholica, por el mismo hecho, y sin averiguacion ni otra inquisicion alguna, y que sean castigados los capitanes, maestres, y oficiales de dichos navios, que fueren transgressores de lo contenido en este articulo y condicion, y de las ordenes que avrá de dar su Magestad Catholica

⁴⁹ On this article and on the history of interloping by the company see *ibid.*, ch. VII.

⁵⁰ On this article see *ibid.*, pp. 344, 345.

para ello, y para que en los puertos de Indias se vilige en evitar semejante fraude, y dé quenta á su Magestad de averse cometido siempre que pueda averiguarse, para que sean convenidos y castigados los delinquentes.

27. Si algunos navios de el assiento fueren armados de guerra, y hizieren alguna pressa de enemigos de una y otra corona, ú de los pyratas cossarios, que ordinariamente cruzan y infestan los mares Americanos, podran entrar con ella en qualquier puerto de la dominacion de su Magestad Catholica, y dandose allí por buena la pressa, no podran ser obligados los apressadores á pagar mas derechos de entrada que los que estuvieren establecidos, y pagaren los vassallos de su Magestad; con advertencia, de que si en las pressas se hallaren negros, los han de poder vender y comerciar dentro del numero de los de su obligacion; pero no la ropa, generos, ó facturas que apressaren; porque esto siempre ha de quedar prohibido; bien que se les permite puedan vender los bastimentos que les sobraren; y tambien se les permite (atendiendo á su conveniencia) puedan llevar los generos, ropas, y facturas apressadas á los puertos de Cartagena ó Portovelo, y entregarlas á los oficiales reales, los quales las recibiran (como su Magestad Catholica se lo avrá de ordenar y ordena) inventariaran, y pondran con assistencia de el apressador en un almagazen, donde se conserven hasta que llegando galeones; y celebradose la feria de España en dichos puertos de Cartagena y Portovelo, los mismos oficiales reales cuyden de que se vendan con noticia y intervencion de los diputados de el comercio y de el mismo apressador, ú de quien tuviere su poder; y que sacandose la quarta parte de la cantidad en que se vendieren, que ha de tocar á su Magestad Catholica, entrar en la caja real y remitirse á España; con distincion y declaracion de lo que procede, se entreguen las tres quartas partes al dueño de las ropas y generos, sin dilacion alguna, sacando y deduciendo de ellas todos los gastos que huvieren tenido en la venta y almagazenage; y á fin de qué no se ofrezca ninguna duda, se ha de declarar y declara que los navios, valandras, y otras qualesquiera embarcaciones apressadas, con la artilleria, pertrechos, y municiones, que en ellas se hallaren, han de ser libres y enteramente de los mismos apressadores.

28. Respecto de encaminarse, ajustarse, y establecerse este contracto principalmente, para que ceda en servicio de sus Magestades Catholica y Christianissima, y utilidad de sus reales erarios, se declara son interessadas ambas Magestades en la mitad de este assiento, y cada una en la quarta parte que le ha de tocar y pertenecer, segun está dispuesto; y como quiera, que para entrar su Magestad Catholica á las ganancias de el producto de este negocio, seria forçoso anticipasse y hiziesse entregar á la Compañia la quarta parte de quatro millones de libras torneses, que hazen un millon trecientos y sesenta y seis mil pesos escudos y dos tercios de otro, que es la cantidad que regula y juzga la Compañia ser necessaria para poner en orden y execucion este assiento, suponiendo que su Magestad Catholica no querrá exhibir esta anticipacion, ofrece la Compañia executarla y suplirla, haziendosele bueno en la quenta que diere, ocho por ciento en cada un año, desde los dias de el desembolso hasta los de el reintegro, y satisfaccion rateada, justa, y puntualmente, para que su Magestad Catholica goze en esta forma de las ventajas y ganancias que pudieren pertenecerle, á que desde luego se obliga la Compañia: pero en caso de que los accidentes y infortunios sean tales que la Compañia no tenga ganancias, y en lugar de ellas padezca algunas perdidas, quedará su Magestad Catholica obligado á satisfacer lo que tocara en la forma que fuere de justicia, y menos sensible á su real patrimonio.⁵¹

⁵¹ On this and other financial provisions of the assiento as well as on the company's financial operations see Scelle, *op. cit.*, vol. II., ch. VIII.

29. La quenta de las ganancias la dará la Compañía luego que ayan cumplido los primeros cinco años, con relaciones juradas y instrumentos legitimos del importe de la compra, rescate, sustento, transporte, y introduccion de las piezas de Indias, y los demas gastos que tuviere la Compañía en este assiento, y testimonios autorizados de lo que huvieren importado y producido las ventas de los esclavos negros en todos los puertos y partes de la America pertenecientes á su Magestad Catholica, donde se huvieren transportado y celebrado las dichas ventas, viniendo uno y otro, examinado, reconocido, y liquidado por los ministros de su Magestad Christianissima, á quienes tocara por la cota que le va señalada, para que en esta corte se pueda assimismo reconocer, ajustar, y liquidar lo que perteneciere á su Magestad Catholica, y cobrarlo de la Compañía, que lo ha de pagar executiva y puntualmente, como obligada á ello en virtud de esta condicion, que ha de tener y tiene fuerza de instrumento guarentigio.

30. Si el producto de las ganancias de los primeros cinco años excediere de la cantidad que se debió anticipar y anticipo la Compañía por su Magestad Catholica, y los intereses de ocho por ciento, que con ella han de abonarse en la forma que queda dicho por aquella quarta parte de su Magestad Catholica, la Compañía se reembolsará en primer lugar de lo que huviere anticipado, y sus intereses, y satisfará (ultra de los derechos anuales de la introduccion) lo demas que se huviere adquirido, y á su Magestad debiere tocarle, sin mora ni dilacion alguna, y se continuará el assiento en la misma conformidad y con la propia obligacion, dandose al fin de el por la Compañía la quenta de las ganancias de los ultimos cinco años, debaxo de las reglas expressadas; y de modo que su Magestad Catholica y los ministros á quienes lo cometiere queden con entera satisfaccion.

31. Ofreciendo la Compañía por el articulo tercero de este contracto anticipar á su Magestad Catholica seiscientas mil libras torneses, moneda de Francia, ó por ellas docientos mil pesos escudos de estos reynos, segun y á los plazos que en el se refiere para extinguirlos y cobrarlos en los dos ultimos años de este assiento, sin que se le abone porcion alguna por riesgo ni interes, se declara que si en la quenta de las ganancias que ha de dar al fin de los primeros cinco años cupiere la extincion y recobro de esta cantidad (despues de satisfecha la anticipacion de la quarta parte y sus intereses, que ha de tener primer lugar) estará en mano y arbitrio de la Compañía retenerla y hazerse pago de ella en todo ó en parte, para que queden libres á su Magestad Catholica los derechos de los dos ultimos años (en que se concede el descuento) y las ganancias que se adquirieren por lo que de ellas le tocara en los ultimos cinco de este assiento; pero no aviendo dichas ganancias, se practicará como queda capitulado.

32. Finalizado el assiento, tendrá la dicha Compañía tres años de termino para liquidar todos sus negocios ó intereses en las Indias, y dar la quenta final á su Magestad Catholica, y en los dichos tres años gozaran la Compañía, sus factores, y dependientes de los privilegios y franquezas que han de tener y le quedan concedidas por este contracto para la entrada de sus baxeles en los puertos Americanos de su Magestad Catholica, y saca libre de sus efectos, sin que pueda aver en ello limitacion ó alteracion alguna.

33. Todos los deudores de la dicha Compañía avran de ser y seran compelidos y apremiados á la paga de lo que debieren, siendo sus credits (como deberan serlo) privilegiados y executivamente exsigidos, segun lo son y deben ser los que á su Magestad Catholica y á su real fisco pertenecen.⁵²

⁵² On this article see *ibid.*, pp. 346, 347.

34. Y para la observancia de lo aquí contenido, y de todo lo demas anexo, dependiente, y perteneciente á ello, y que de ningun modo se falte á la buena fee y sinceridad de su preciso cumplimiento, debaxo de ningun pretexto, causa, ni motivo, ha de dispensar su Magestad Catholica (como dispensa, en fuerça y en virtud de este contracto) todas las leyes, ordenes, cédulas, fueros, establecimientos, usos, y costumbres que á ello se opusieren en qualquiera parte de los puertos y provincias de la America de la dominacion de su Magestad, por el tiempo que durare este assiento y los tres años mas que se conceden á la Compañia para recoger su producto y dar la quenta final del todo, segun queda expressado, dexandolas en su fuerça y vigor para lo de adelante; y ultimamente su Magestad Catholica concede á la Compañia, sus factores, recaudadores, ministros, oficiales politicos y militares en mar y en tierra todas las gracias, franquezas, y exempciones que se huvieren concedido en los assientos precedentes, sin limitacion ni interpretacion alguna en quanto no se oponga á lo prevenido y declarado en los articulos antecedentes: y en esta misma conformidad, mutua y reciprocamente, se obliga la Compañia al cumplimiento, integra, y precisa observancia de lo en ellos contenido. Y el referido Monsiur Ducase por sí y en nombre de la misma Compañia Real de Guinea (cuyo poder presenta, otorgado en Paris á veinte y tres de Julio proximo passado) á traer ratificado y confirmado este ajuste, capitulacion, y contracto en el termino que se le señalare. Fecho en Madrid á veinte y siete de Agosto de mil setecientos y uno.

DUCASE.

Y porque mi voluntad es que todo lo expressado en cada uno de los capitulos y condiciones contenidas en el pliego arriba inserto, y en los allanamientos hechos en el, tenga cumplido efecto: por la presente la apruebo y ratifico, y mando se guarde, cumpla, y execute en todo y por todo, como en el y en cada uno de sus capitulos y allanamientos hechos en ellos se contiene y declara, y que contra su tenor y forma no se vaya, ni passe, ni consienta ir ni passar en manera alguna, dispensando (como por esta vez dispenso) todas las leyes y prohibiciones que huviere en contrario; y prometo y asseguro por mi fee y palabra real que cumpliendose por parte de la Compañia Real de Guinea establecida en Francia con lo que la toca y es obligada, se cumplirá de la mia lo contractado, para cuya firmeza en caso necessario se otorgará la escritura ó escrituras que en tales casos se ha acostumbrado; bien que sin esta circunstancia desde luego doy por concluido y celebrado el contracto; y quiero que se den todas las cedulas y despachos que fueren necesarios en conformidad de lo capitulado: y para la execucion y cumplimiento de ello, tengo por bien y mando, que aunque no se saquen, se cumpla y guarde cada uno de los capitulos de el referido pliego, assi en estos reynos como en las Indias, tan puntual y enteramente, como se haria y deberia hazer, si de qualquiera de los dichos capitulos se diera cedula particular mia, sin otro requisito alguno: y de la presente tomarán la razon mis contadores de quantas que residen en mi Consejo de las Indias. Fecha en Daroca á catorze de Septiembre de mil setesientos y un años.

YO EL REY.

Por mandado de el Rey nuestro señor. DON DOMINGO LOPEZ DE CALO MONDRAGON.

TRANSLATION.

THE KING. Inasmuch as the assiento for negroes was terminated by reason of the last treaty made between this crown and the crown of France with Portugal, it is necessary to hinder immediately, and by every means, the introduction of negroes into the kingdoms of the Indies by foreign nations. And since the Royal Company of Guinea, established in France, desires to enter into this business, the directors and others interested in the company have empowered Monsieur Du Casse, knight of the Order of St. Louis, rear-admiral of the naval fleets of the Most Christian King my grandfather, in Paris, on July 23 of this present year, to treat and adjust a new assiento for the introduction of negro slaves into the Indies. By virtue of this, the aforementioned Monsieur Du Casse tendered a proposal for himself, and in the name of the said Royal Company of Guinea, binding himself to take charge of this assiento for ten years, beginning on May 1 of the coming year 1702, and in those years to introduce 48,000 pieces of the Indies of both sexes, by assignment and apportionment, 4800 in each of the ten years, with different conditions, respecting which my Council of the Indies advised me, and as a result, I have deemed it good to agree to and approve the aforesaid proposal, which consists of 34 conditions, with the modifications inserted in some of them by Monsieur Du Casse, which is of the following tenor:

1. The before-mentioned Royal Company, founded in France with permission of their Catholic and Most Christian Majesties, in order to take charge of the assiento and the introduction of negro slaves into the American West Indies, pertaining to his Catholic Majesty, and in order to establish a laudable, real, mutual, and reciprocal utility for their Majesties, and for the subjects of both crowns, offers and engages, for itself, its directors, and individual associates, to take charge of introducing into the above-mentioned West Indies of his Catholic Majesty, in the term of ten years beginning on the first of May, next following, of the year 1702, and ending on the same day of the year 1712, to wit 48,000 pieces of the Indies of both sexes and of all ages, not coming from Elmina or from Cape Verde (as not suitable for those kingdoms), by assignment and apportionment 4800 in each of the said ten years.

2. For each piece of the Indies of the regular measure of those provinces in which the hitherto established and accustomed duties are to be paid, the Company shall pay thirty-three and a third crowns of silver, of the value of three *livres Tournois*, money of France, which is the same as thirty-three and a third *pesos escudos* of these realms. In this amount are to be included and comprehended (as they are comprehended) all the import duties and regalia pertaining to his Catholic Majesty, without its being possible to ask for anything else.

3. The said Company shall advance to his Catholic Majesty in order to meet present exigencies, 600,000 *livres Tournois*, money of France, and for them 200,000 *pesos escudos*, in two equal payments of 300,000 *livres*, or 100,000 *pesos* each, the first payment, two months after this assiento is approved and signed by his Majesty, and the second, another two months after the first. The said Company shall not be able to reimburse itself for this amount until the last two years of this assiento, when it may do so both from the import duties and from the profits pertaining to his Catholic Majesty, as will be stated farther on.

4. The Company shall be obliged to pay the above-mentioned amount in this court, or in that of Paris, at the option of his Catholic Majesty. Conformably with the same option the Company shall be obliged and bound to satisfy him regarding the aforesaid import duties, notwithstanding that its obligation was to pay them in the Indies, in order that his Catholic Majesty may be afforded this greater convenience.

5. Payments of the duties shall be made from six months to six months, beginning with the first of November of the year next following, and continuing without interruption up to the end of this contract, without dispute, postponement, or any explanation. But it is made known and declared that the duties pertaining to the 4000 pieces of the Indies must be paid in full, and not those on the remaining 800, because, for the whole duration and period of this assiento, his Majesty is to and does formally concede, donate and remit them to the Company, for the interest and risk that ought to be placed to the credit of the Company, which will pay and advance the above-mentioned amounts in this court, or in that of Paris, as is said. The measure, besides being useful to his Catholic Majesty's royal treasury, facilitates and clarifies the accounting of this transaction.

6. Fearing that in case of war the said introduction of negro slaves into the Indies will be greatly hindered, the Company being exposed to the danger of losing its ships and cargoes, it is declared that, in the whole period of its [the war's] duration, it shall not be obliged to introduce more than 3000 pieces of the Indies each year, retaining the right to make up the number and bring in the 1800 remaining, the complement of the 4800 allowed, in the following years. And if, by any accident, the Company should not even be able to make up the number of 3000 pieces of the Indies, it shall retain its privilege, the pieces that it shall have failed to introduce being clearly stated. But it shall not on this account fail to pay in full, from six months to six months, in each year of the war, the 300,000 *livres Tournois*, or the 100,000 *pesos escudos*, the amount of the duties of the said 3000 pieces of the Indies. Rather, whenever it shall be clear that it has introduced more than the said 3000 pieces, it shall punctually make payment in full, in the manner aforementioned.

In this condition there is the following modification: I agree that if the war does not stop within the ten years, and on that account I fail to introduce at the beginning, middle, or end of this period the negroes prescribed in the requirement of this contract, I will pay all the duties. But I may introduce the negroes that are lacking in the three years granted for giving an account, and for taking back the effects proceeding from this assiento, without being obliged to pay at that time any other duties.

7. It is likewise declared that even though peace shall continue, the Company shall not be rigorously obliged to introduce the 4800 pieces of the Indies in each year, on account of the various accidents, risks, and contingencies wont to be experienced; and that the Company shall retain the right and faculty of making up, in the year or years following of this contract, the number of those that it shall have failed to introduce; paying, however, the entire amount corresponding to the duties on the 4000 pieces of the Indies, as if it had introduced them from six months to six months, as is aforesaid.

8. The Company shall transport its cargoes in ships of his Most Christian Majesty, or in its own, or even in ships belonging to Spaniards, if to its advantage, manned by subjects of the French crown, or by those of his Catholic Majesty, at its option; and in case of admitting any others, for want of

men, although the assumption is unlikely, they shall all be Roman Catholics. At the same time the said Company is to be allowed and empowered to introduce the negro slaves required by this *assiento*, into the said ports of the North Sea (Atlantic Ocean) in any ships of the nations friendly to this crown, as has been conceded to other *assientists*; but always on the distinct condition that both the commander and the personnel of the crew of the said ships must be Roman Catholics.

9. Because of the grave inconveniences arising from the fact that the introduction of negro slaves is not carried on in all ports of the Indies, although it is certain that the provinces lacking them experience great misery for want of tillage and cultivation in their haciendas and lands, from which result acknowledged prejudice and loss to the royal patrimony of his Catholic Majesty, and the excessive expenditures made and frauds practised to acquire some negroes, it is a condition of this contract that the said Company may, at its option, introduce and sell the said pieces of the Indies in all ports of the Indies on the Atlantic Coast, his Catholic Majesty dispensing (as he does dispense), with the restriction hitherto established in order that they should enter only the ports assigned by the preceding *asientos*. But it is declared that they are not to enter or land any negro in a port not having royal officers to visit the ships or vessels and certify to the negroes introduced. It is likewise declared that the Company is to sell those carried to the ports of the Windward Islands, Santa Marta, Cumaná, and Maracaibo, at no higher rate than 300 pesos each, and as much lower as it shall be able, in order that the natives and inhabitants of those places may be able to pay for them and buy them. It is notified that in the rest of the ports of New Spain and the Main, the Company shall be permitted to fix prices as shall be best for it.

10. Having the privilege of introducing negroes into all American ports on the Atlantic coast for the reason stated, as is aforesaid, the Company may do this in the port of Buenos Aires, bringing to it in each year of this *assiento* two ships or vessels, capable of carrying from 700 to 800 pieces of the Indies of both sexes, in order to sell them there, as it shall be able and shall arrange;—from which those provinces will reap a general advantage. But if this number be exceeded, the Company may not sell or land the rest that it shall carry; nor are the governor and royal officers to permit it, for any cause, pretext, or reason, however urgent.

This condition has the following modification: I agree that instead of introducing each year into Buenos Aires from 700 to 800 negroes, permission be limited to introducing from 500 to 600.

11. In order to carry and introduce negro slaves into the provinces of Peru, permission is to be and is granted to the Company to buy or construct, in exchange for negroes or otherwise, in Panama or other place having shipwrights' yards, or port of the South Sea, two ships, frigates, or hookers of about 400 tons, a little more or less, in which to be able to ship the negroes from Panama to Peru and to bring back the proceeds of their sale in produce of the land, reals, bars of silver, and ingots of gold. And if the quinto is paid, and without fraud, the Company can not be obliged to pay any duties on the silver or gold that they may carry in reals, bars, or ingots, whether for import or for export, for the said reals, bars, and ingots of gold are to be free as they would and should be if they pertained to his Catholic Majesty. In the same way, the said Company is permitted to send from Europe to Porto Bello, and to carry to Panama, the rigging, canvas, iron, and other materials necessary for the construction and building of the said two boats, hookers,

or frigates, and their upkeep, only. For if the Company shall sell or trade the said materials in whole or in part on the pretext of not needing them, or on any other pretext, they are to be surrendered as forfeited, and the buyers and sellers are to be punished as shall be just, permission for this act being from henceforth absolutely abolished and prohibited. And warning is given that after the expiration of this assiento, the said Company shall not be able to use the two frigates, hookers, or ships, abovementioned, nor transfer them to Europe by passing through the Straits [of Magellan], on account of the inconveniences that this might occasion. Rather, the Company shall be obliged to sell, alienate, or donate them, as it shall deem best, within the six months following the end of this contract.

This condition is with the following modification: I agree that I will charter ships to transport negroes to the provinces of Peru, equipping them with crews and soldiers, at the pleasure of the Company, naming the sea and war officers, and being permitted to bring from Europe the materials necessary to maintain the chartered vessels or ships.

12. The said Company shall be permitted to avail itself of Frenchmen or of Spaniards, at its option, for the conduct of this business, both in the ports of America and in the other places in the interior, his Catholic Majesty annulling the laws prohibiting such entry to foreigners; and declaring, desiring, and commanding, that the French be treated during this assiento as if they were Spanish subjects, for this purpose merely. The Company, moreover, is cautioned not to have more than from four to six Frenchmen in any port of the Indies, of whom those will pass into the interior whom the Company shall need for the administration and tax-gathering of this dependency, which the said Company is to govern in the way that shall seem and be best for it, without any agent or royal officer, political or military, of whatever grade and quality he may be, being able to hinder it, under any pretext, unless in opposing violation of the intent of the established laws, or of the terms of this assiento.

13. The Company shall be permitted to name judges conservators in all the ports or principal places of America, who shall not be royal officers, because this is forbidden to them, but shall be subjects of his Catholic Majesty, of a degree and quality that shall merit and have his royal approval. And exclusive cognizance of all the causes, transactions, and affairs of this assiento are to be granted to them, with full authority, power, and jurisdiction, and inhibition of audiencias, *ministros*, and tribunals, presidents, captains general, governors, *corregidores*, *alcaldes mayores*, and any other judges and justices whatever, among whom are to be included even the very viceroys of those kingdoms, for only the aforementioned judges conservators are to have cognizance of these causes and their incidents, allowing appeals, in the cases permitted by law, to the royal and supreme Council of the Indies. At the same time his Catholic Majesty is to, and does, grant that he who is or shall be president of the said Council, or the person who shall head it, shall be protector of this assiento, and that furthermore the Company may propose a *ministro* of the said Supreme Council of the Indies, so that his Majesty may approve him, and he may be his exclusive judge conservator; just as both things have been performed and practised, in preceding assientos.

14. Neither may the viceroys, audiencias, presidents, captains general, governors, royal officers, or any other minister lay any embargo on or detain the ships of this assiento, or arm them for war, or for any other pretext, cause, or reason, hinder them in their voyage. Rather, they shall be obliged

to give them, and cause to be given them, all the succor and aid that they shall solicit for their quicker despatch, and the provisions and things they need, at current prices, under penalty of having to answer for, and pay in full, themselves, the losses occasioned the Company by the detention of the said boats.

15. Neither may the aforementioned viceroys, presidents, captains general, governors, *corregidores*, *alcaldes mayores*, judges, and officers or any other minister or officer take, remove, seize, or violently distrain for any pretext, cause, or reason, however urgent, any goods or effects of this assiento, or of the said Company, under penalty of being punished and of having to answer and pay in full for the loss they may occasion.

16. The Company and its factors in the Indies shall be permitted to have in their service the seamen, muleteers, and officers for loading and unloading whom they may need, coming to an agreement with them about their wages, openly and willingly, and paying them in full the wages, rewards, or stipends that they may have agreed on.

17. The said Company may, at its pleasure, load its returns upon the ships of the *flotas* or galleons (an agreement being reached with the captains and owners of the said ships), or upon the ships belonging to this assiento. And they may sail under convoy, if they deem best, with the *flotas* or galleons, or other of his Catholic Majesty's warships, which he may deign to command positively to receive them, and bring them under their protection.

18. It is a condition, that from the first day of May of the year next following, 1702, until possession of this assiento is taken, and after it has been taken, neither the Portuguese Company nor any other person may bring in any negro slave. Should they do so, his Catholic Majesty is immediately to declare them, as he does declare them, as forfeited and confiscated in favor of, and for the benefit of, this assiento and Company, which shall pay the duties belonging to his royal treasury, in the manner ordered and established, on the negroes found to have been introduced contrary to the tenor of this article.

19. Likewise, it is an essential condition of this assiento and contract, that only the said Company, its factors and agents, are to be permitted to sail, and to introduce the abovementioned negro slaves, into the Atlantic ports of his Catholic Majesty's West Indies, the rest of the subjects of the crown, and foreigners, being prohibited from supplying and introducing them, under the penalties by law established. And his Catholic Majesty is under obligation to maintain (as he offers to maintain, on his faith and royal word) the said Company in the entire possession and observance of this contract for the term agreed on, without permitting or concealing anything opposed to its good faith and to the exact fulfillment of its articles and conditions, this being conformable to royal justice and for his great advantage.

20. And if anything should happen that for this or any other cause should disturb or trouble the activities and rights of the said Company, and should occasion it any lawsuit or lawsuits, it is a condition, that his Catholic Majesty is to reserve to himself alone the cognizance of them, prohibiting all and any judges and justices from taking cognizance of and proceeding in the said lawsuits and causes.

21. The ships of this traffic and assiento, upon arriving with their cargoes of negroes at the ports of the Indies, are to undergo sanitary inspection, in order that the governor and royal officers may permit them to enter, which they may not do in any other way.

22. Having cast anchor and anchored in any of the ports, they are to be visited by the governor and royal officers, and, disembarking the negroes, all or a part, they may at the same time land the provisions carried for their sustenance, placing them in any house or storehouse, separated, or registered and noted by the said royal officers, so that frauds and confusion may be avoided. But they may not and are not to be permitted to disembark, bring in, or sell any cloth, goods, or merchandise, under any pretext or for any reason, however grave, or trade or sell anything except the said negro slaves, under penalty of [forfeiture of] the life of him who may do it and of the agents, vassals, and subjects of his Catholic Majesty, who may be guilty of permitting it. For this is to be (as it is) absolutely prohibited, and contrary to the intention, command, and good faith of the said Company, as it is opposed to the laws of these kingdoms. And it is declared that the things that may be seized in this way as pertaining to an illicit and forbidden commerce, shall be valued and appraised, and being burned, immediately, in a public place, by order of the said governor and royal officers, to serve as an example, the captain and master of the said ship or vessel (if not involved in the crime) shall be sentenced to pay the amount of the value of the [things seized] as penalty for failing to discover and prevent the trade. And that if they be accomplices or principal delinquents in this [commerce], they shall be sentenced to death, and the sentence executed without allowing them excuse or appeal capable of suspending or delaying it. The same shall be done with respect to the others found to be criminals and accomplices in this crime, strictly and inviolably, in order that in consideration of the punishment the warning may be secured, and similar fraudulent importations may not be tolerated or undertaken; for the exact and punctual performance of which, his Catholic Majesty will bring to rigorous account all his agents and officers. But the cargo of negroes shall not be regarded as forfeited by reason of the aforesaid, nor, likewise, the vessel or ship on which they shall be, nor the provisions carried for their consumption and sustenance. Rather, this, as not culpable, is to remain free, and the person to whom it belonged is to pursue his commerce in the manner declared and permitted. Neither shall the death penalty be pronounced or executed upon anyone selling or trading goods or cloth, the value of which does not come to 100 *pesos escudos*; for in this case it will be sufficient (as his Catholic Majesty is to, and does, command) that the cloth found, having been seized, appraised, and burned (for which there is to be no dispensation), the amount of its value shall be imposed as a fine, and recovered from the captain and master, as penalty for his carelessness and negligence, as is implied.

This condition is with the following modification: I agree that they be allowed to appeal, just as the Supreme Council of the Indies advises. The Council advised, in regard to this condition, that it might be agreed to, the death penalty being executed as proposed, but a recourse to appeal being allowed, to a limited extent, in the cases permitted by law.

23. They are not to pay import or export duties, or any others, on the provisions that they disembark for the sustenance of the negroes only. But on the provisions that they may buy and remove from the ports, they shall have to pay the established duties, as do the subjects of his Catholic Majesty.

24. Since the duties on the import and export of the pieces of the Indies originate from the day of their disembarkation in any of the ports of those kingdoms, it is to be declared (as it is declared, and is just), that although one or more of the disembarked negroes may die before being sold, the

Company is not, on this account, to try to omit the payment of duties on those that may die, according to the regulation and obligation abovementioned, or to advance any pretension with respect to this.

25. The negroes that may be disposed of in any port having been sold, they may carry those remaining to other ports, and may take in payment for those whom they shall sell reals, bars of silver, and ingots of gold (the quinto being paid and without fraud), and goods and produce of the land. And they may freely remove from any of the ports the reals, silver, and gold that they may receive on this account, freely and without paying duties; because they are to pay in full from the goods and produce the duties established, according to the place from which they may export them. And if they sell or exchange any negroes for produce of the land, of whatever kind or quality, because there are no reals where they sell them, they are permitted to transport them with their cargoes to other ports, and sell them there, paying the customary duties.

This condition is with the following modification: I agree that I am not to sell in the interior the produce that I shall carry from one port to another as proceeds from the sale of negroes.

26. It is the express condition of this contract, that the said ships of this traffic and *asiento* may set out from the ports of France or Spain, at their pleasure, giving notice of their departure to his Catholic Majesty, and return with the reals, silver, gold, and produce that they may acquire, and collect from the sale of their cargoes, to the ports of France or Spain, at their option. It is also declared that, coming to the ports of Spain, they shall deliver their register to his Majesty's agents, so that what they carry may be evident; and coming to the ports of France they shall send a report of it, so that his Majesty may be fully informed of everything. But no ship shall bring reals, silver, gold, or produce not obtained from the proceeds of this *asiento* and the price of the pieces of the Indies that they may sell; nor [shall any ship bring] any property or commissions for private persons of the said kingdoms, for as soon as and whenever it shall be found out, the Company desires that [any such thing] be regarded (as it is to be regarded) as confiscated in favor of the royal hacienda of his Catholic Majesty, *ipso facto*, and without investigation or any further inquiry, and that punishment be imposed on the captains, masters, and officers of the said ships, who shall transgress the contents of this article and condition, and the orders that his Catholic Majesty is to give for that end, and in order that the like fraud may be watched for and avoided in the ports of the Indies; and [the Company] shall give account to his Majesty of such transgressions whenever ascertained, in order that the delinquents may be apprehended and punished.

27. If any ships of the *asiento* shall be armed for war, and shall make any prize of enemies of either crown, or of the pirate corsairs that ordinarily cruise and infest the American seas, they may enter with it into any port under his Catholic Majesty's dominion, and the prize being considered there as good, the captors shall not be obliged to pay greater import duties than those already established, and paid by the subjects of his Majesty. But it is notified that if there be negroes on the prizes, they are to be able to sell and trade them, within the number stipulated in their contract; but not the cloth, goods, or merchandise that they may seize, for this is always to be prohibited. Yet they are permitted to sell the provisions of which they may have a surplus, and likewise, at their convenience, to carry the seized goods, cloth, and merchandize to the ports of Cartagena or Porto Bello, and deliver them

to the royal officers, who shall receive them (as his Catholic Majesty is to order, and does order), make an inventory of them, and place them, with the aid of the captor, in a storehouse, where they may be preserved until, upon the arrival of the galleons and the holding of the Spanish fair in the said ports of Cartagena and Porto Bello, the same royal officers shall see that they are sold, with the knowledge and intervention of the deputies of the commerce, and of the captor himself, or of whoever shall hold his power. And the fourth part of the amount for which they shall be sold having been deducted, which is to belong to his Catholic Majesty, [the proceeds] put into the royal chest and remitted to Spain, their source being distinguished and declared, the three-fourths shall be delivered to the owner of the cloths and goods, without any delay, deducting and subtracting from them all the expenses for the sale, and storage; and to avoid any doubt, it is to be and is declared that the ships, sloops, and any other captured vessels whatever, with the artillery, arms, and munitions found therein are to belong freely and entirely to the captors themselves.

28. Considering that this contract was planned, adjusted, and established chiefly in order to be of service to their Catholic and Most Christian Majesties, and of benefit to their royal treasuries, it is declared that both of their Majesties, together, are interested in half of this *assiento*, and each of them in the fourth part that is to belong and pertain to it, as is arranged; and as it requires, that, in order that his Catholic Majesty should begin to derive profits from the proceeds of this business, there should be advanced and delivered to the Company the fourth part of four millions of *livres Tournois*, making 1,366,000 $\frac{2}{3}$ *pesos escudos*, which is the amount that the Company rules and judges to be necessary for putting this *assiento* into order and execution, then, in case his Catholic Majesty shall not desire to make this advance, the Company offers to effect and supply it, undertaking it on the computation that it shall yield 8 per cent. each year from the time of disbursement up to that of redintegration and repayment, payment being made justly and punctually, so that his Catholic Majesty may enjoy in this way the advantages and profits that may pertain to him, to which from the present moment the Company binds itself. But in case the accidents and misfortunes be such that the Company shall have no profits, but, instead, shall suffer some losses, his Catholic Majesty shall remain obliged to pay in full what shall pertain to him, in the way that shall be just and shall least affect his royal patrimony.

29. The Company shall give an account of its profits, upon completing the first five years, with sworn statements and authentic instruments, concerning the amount spent for the purchase, ransom, maintenance, transport, and introduction of the pieces of the Indies, and the other expenses that the Company shall have in this *assiento*, and attested statements of the amount produced by the sales of the negro slaves in all the ports and districts of America pertaining to his Catholic Majesty, where they shall have been carried, and the said sales made. Both statements shall be examined, investigated, and reduced to order, by the agents of his Most Christian Majesty, to whom it shall appertain, for the quota assigned to him, in order that in this court his Catholic Majesty's share may likewise be investigated, adjusted, and liquidated, and recovered from the Company, which is to pay it promptly and punctually, as it is obliged to do by virtue of this condition, which is to have, and has, the force of a contract enforceable by the justices.

30. If the proceeds of the profits of the first five years shall exceed the amount that was due to be advanced and that the Company did advance for his Catholic Majesty, and the interest payments of 8 per cent. that are to be

credited with it in the form stated, for his Catholic Majesty's abovementioned fourth part, the Company shall, in the first place, reimburse itself for the amount advanced and the interest payments, and shall pay in full (in addition to the yearly import duties) the rest that shall have been acquired, and ought to belong to his Majesty, without delay or any procrastination. The *assiento* shall be continued, in the same form and in accordance with the obligations pertaining to it, and at its termination the Company shall render an account of the profits of the last five years, under the rules stated, and so that his Catholic Majesty, and the ministers to whom he shall entrust the matters, shall be entirely satisfied.

31. Since the Company offers by article 3 of this contract to advance to his Catholic Majesty 600,000 *livres Tournois*, money of France, or, instead, 200,000 *pesos escudos* of these kingdoms, in the manner and at the places referred to therein, with the intention of reimbursing and recovering them in the last two years of this *assiento*, without any allowance being credited to it for risk or interest, it is declared that if in the account of expenses that it is to give at the end of the first five years, it shall desire the reimbursement and recovery of this amount (after the advance of the fourth part and the interest thereon, which are to have the first place, are paid off), it shall be in the power and discretion of the Company to retain it, and to be repaid it in whole or in part, so that his Catholic Majesty may have unencumbered the duties of the last two years (in which the discount is conceded) and the profits that shall be acquired for what shall pertain to him, in the last five years of this *assiento*. But if the Company does not have the said profits, the course agreed on shall be carried out.

32. The *assiento* having been finished, the said Company shall have a three-year period for liquidating all its business or interests in the Indies, and for rendering the final account to his Catholic Majesty. In the said three years the Company, its factors and dependents, shall enjoy the privileges and franchises that they are to have, and that shall remain granted to the Company by this contract, for the entry of their vessels into the American ports of his Catholic Majesty and the free removal of their effects, without any limitation or alteration of the contract being permitted.

33. All the debtors of the said Company are to be and shall be compelled and obliged to pay what they may owe, the Company's credits being (as they should be) privileged and subject to prompt exaction, as credits pertaining to his Catholic Majesty and his royal fisc are and ought to be.

34. And for the observance of that herein contained, and of all the rest joined, dependent, and pertaining thereto, and that nothing shall be lacking to the good faith and sincerity of its exact fulfillment, for any pretext, cause, or reason, his Catholic Majesty is to dispense, as he does dispense, by force and virtue of this contract, with all the laws, orders, decrees, privileges, statutes, uses, and customs that might be contrary to it in any part of the ports and provinces of America under the dominion of his Majesty, within the period of duration of this *assiento*, and the three additional years conceded to the Company for collecting its proceeds and giving the final account of everything, as is aforesaid, leaving them in their force and vigor for the subsequent period. And finally, his Catholic Majesty grants to the Company, its factors, tax-gatherers, agents, political and military officers, on sea and land, all the favors, liberties, and exemptions granted in former *asientos*, with out any limitation or interpretation, in so far as it is not opposed to what is provided and declared in the foregoing articles. And in conformity with

the above, the Company mutually and reciprocally binds itself to the fulfillment, entire and exact observance of what is contained in the articles. And the said Monsieur Ducasse, for himself and in the name of the said Royal Company of Guinea (whose powers, executed in Paris on July 23, last past, he presents), [binds himself] to cause this agreement, capitulation, and contract to be ratified and confirmed within the period fixed therefor. Done in Madrid, August 27, 1701.

DUCASSE.

And because it is my will that everything expressed in each of the articles and conditions contained in the proposal inserted above, and in the modifications made in it, shall be considered of full effect, by these presents I approve and ratify it, and I command that it be kept, fulfilled, and executed absolutely, as is contained and declared in it and in each of its articles and the modifications made therein, and that nothing contrary to its tenor shall be done or come to pass, nor shall I allow it to be done or to come to pass, in any manner, dispensing (as for this occasion I do dispense) with all the laws and prohibitions that there shall be to the contrary. And I promise and declare on my faith and royal word, that if, on the part of the Royal Company of Guinea established in France, what pertains to it and is obligated in the contract is fulfilled, it will be fulfilled on my part. For the confirmation of which, if needful, the instrument or instruments customary in such cases shall be executed; although without this action I consider the contract as concluded and executed from the present moment. And I desire that all the orders and warrants called for by the agreement shall be given. And for its execution and fulfillment I consent and command that although they be not cited, each chapter of the said document shall be fulfilled and kept, both in these kingdoms and in the Indies, as exactly and fully as it would and should be if my special order were given regarding any one of the said chapters, without any other requisite. And for the present my accountants, who are in my Council of the Indies, shall register it. Done in Daroca, September 14, 1701.

I THE KING.

By command of the King, our lord. DON DOMINGO LÓPEZ DE CALO
MONDRAGON.

Treaty of alliance (Second Grand Alliance) between Austria, England, and the United Netherlands, concluded at the Hague, September 7, 1701, N. S. Ratification by the King of England, at Loo, September 21/October 2, 1701. [Ratification by the Emperor, September 19, 1701; by the States General, October 5, 1701.]

INTRODUCTION.

When Louis XIV. departed from the treaty of partition¹ by acquiescing in his grandson's succession to the entire Spanish monarchy there was danger that French control of Spain and Spanish America would injure the security, the religion, and the overseas trade of England and the United Provinces.² William III. believed that this long-dreaded menace could be averted only by a war against France; but he intended to defer action until his subjects demanded it. In Parliament the Tories were blind to the danger. The Whigs however were inclined to war. According to d'Avaux, representative of France at the Hague, it was the hope of conquering all or part of the Spanish Indies that led them to favor recourse to arms.³ Gradually, skillfully, and by aid of sundry events William brought Parliament to act as he desired. On February 20/March 3, 1701, the House of Commons took a first step by

¹ This treaty of partition, of the year 1700, is printed above, Doc. 86.

² For William III.'s attitude with regard to the possible control of Spanish America by France see above, Doc. 87, p. 31, note 18. Lord Manchester, ambassador to France, wrote to Secretary Vernon on Jan. 15, 1701, as follows: "There is now nothing left to make the great union betwixt France and Spain compleat, but the settling their trade; and it is said, that all the impositions on the produce of Spain will be taken off here, as the like will be done there, in relation to the produce of France. Several other regulations are considering of, and there is no doubt but France will find their account. The great point will be, whether France can furnish them with commodities proper for the Indies. If so, we may greatly suffer." C. Cole, *Memoirs of Affairs of State*, p. 280. On July 13, 1701, Manchester wrote again to Vernon from Paris: "They have here established a Company for the trade to Mexico and Peru. Their stock consists of six millions French. The King of Spain has a fourth part, the French king two millions, and the Company the rest. They are to have the whole trade, exclusive from all others, and without doubt little but the produce of France will be sent on board the galleons. There is also another project for engrossing all the Spanish wool." *Ibid.*, p. 399. On Aug. 11 Schonenberg wrote from Madrid to Manchester, "The French work night and day to make themselves absolute masters of the trade in the Spanish islands, in order to ruin intirely that of England and Holland." *Ibid.*, p. 408. On Sept. 8 Schonenberg wrote again to Manchester concerning the *assiento*, which, he said, "is, in effect, making France mistress of all the trade to the Indies". *Ibid.*, p. 416. On Sept. 16 Manchester wrote to Blathwayt, "Here is also established a Council of Trade, and they are taking their measures to engross the whole trade of Spain, Portugal, and the West-Indies". *Ibid.*, p. 419.

³ D'Avaux to Louis XIV., March 3, 1701, quoted by Legrelle, *La Succession d'Espagne*, IV. 125.

unanimously voting an address to the king, asking him to "enter into such negotiations, in concert with the States General of the United Provinces and other potentates, as may most effectually conduce to the mutual safety of these kingdoms and the States General, and the preservation of the peace of Europe," and assuring him of support and assistance in performance of the treaty of defensive alliance made with the States General on March 3/13, 1677/8.⁴ In pursuance of William III.'s instructions,⁵ promptly following upon this address, his representative at the Hague, Alexander Stanhope, presented a number of demands to Count d'Avaux. At the same time, March 22, Dutch deputies of the States General delivered their almost identical proposals to the French envoy. The chief of these conditions were as follows:

Reasonable satisfaction to the Emperor for his pretensions to the Spanish succession; inclusion of the Emperor in the treaty to be made by the Dutch and English with France and Spain; withdrawal of all French troops from the Spanish Netherlands, and the garrisoning of certain towns there by the Dutch and English, respectively; no transfer to France of any place belonging to the crown of Spain within or without Europe; retention by the Dutch and English of the rights and privileges enjoyed by them at the death of the late King of Spain, with regard to navigation, commerce, and other matters in Spanish dominions within and without Europe; renewal of treaties between Spain and England, and between Spain and the United Netherlands, including the treaty of Münster;⁶ enjoyment by the English and Dutch of the rights and privileges possessed or to be possessed by the French or others in the Spanish dominions within or without Europe.⁷

Louis XIV. refused these proposals. He offered the Dutch no greater security than a renewal of the treaty of Ryswyk. He would not authorize d'Avaux to negotiate with Stanhope on English affairs at the Hague, but declared that the English ambassador at Paris or the French minister at London were the proper channels for negotiations concerning England.⁸ His efforts to separate the two maritime powers were in vain.⁹ During April and May, while the conferences scarcely begun with d'Avaux were suspended, the English and Dutch, responding to the covert guidance of William III., became more and more bent on undertaking diplomatic and, if necessary, military action against France, in concert with each other and with the Emperor.¹⁰ In response to an appeal from the States General the House of Commons, on

⁴ The resolution is in *Journals of the House of Commons*, XIII. 349. A translation of the treaty of offensive alliance is *ibid.*, pp. 345, 346. On this treaty *cf.* Doc. 71, note 7, in vol. II. of this series.

⁵ C. Cole, *op. cit.*, pp. 332, 333.

⁶ A part of this treaty is in vol. I. of this series, Doc. 40.

⁷ The English and Dutch proposals are in G. de Lamberty, *Mémoires pour servir à l'Histoire du XVIII^e Siècle*, I. 403-408, and in translation in Cole, *op. cit.*, pp. 339-343.

⁸ *Journals of the House of Commons*, XIII. 462; Lamberty, *op. cit.*, I. 410, 455; Sirtema de Grovestins, *Histoire des Luites et Rivalités Politiques entre les Puissances Maritimes et la France*, VIII. 59-61; Klopp, *Der Fall des Hauses Stuart*, IX. 204 ff.

⁹ Sirtema de Grovestins, *op. cit.*, VIII. 62; Klopp, *op. cit.*, IX. 206, 241.

¹⁰ *Cf.* *Journals of the House of Commons*, XIII. 466, 467, 475, 506-520, *passim*; Lamberty, *op. cit.*, I. 454 ff.

May 9/20, unanimously resolved to send immediately to the Dutch the military aid stipulated by the treaty of 1678,¹¹ and on the following day the House of Lords desired the king to enter into an offensive and defensive league with the States General, and into alliances with the Emperor, "pursuant to the ends of the treaty of 1689"—the first Grand Alliance against France.¹²

Since the beginning of the year 1701 Count Wratislaw, the representative of the Emperor at the English court, had been urging the renewal of the treaty of 1689,¹³ binding England and the United Netherlands to aid the Emperor to secure the succession to the entire Spanish monarchy.¹⁴ The King of England did not wish the entire succession to fall to the Emperor, but hoped that the prospect of an adequate compensation for the territory awarded him by the last partition treaty would avail to draw the Emperor into a new alliance. William deferred pressing for this until he was certain of support from both houses of Parliament. The advance of the Imperial troops under Prince Eugene into northern Italy doubtless gave an impetus to the lower house.¹⁵ Responding to the king's speech of June 12/23, the Commons declared themselves ready to assist in supporting alliances that the king might make in conjunction with the Emperor and the States General "for the preservation of the liberties of Europe, the prosperity and peace of England, and for reducing the exorbitant power of France".¹⁶

Sure of the co-operation of Parliament, William took steps to end the negotiations with d'Avaux at the Hague, which, early in June, Louis had tried to revive by at last admitting Stanhope to them. Stanhope had at once insisted on the inclusion of the Imperial ambassador. He notified d'Avaux on July 3 of his orders not to continue conferences with him unless France would give satisfaction to the Emperor.¹⁷ The manner as well as the matter of this demand ensured the termination of these negotiations.

On July 14 William III. arrived at the Hague, together with Marlborough, recently appointed commander-in-chief of the English forces in the Low Countries and ambassador extraordinary and plenipotentiary for negotiating the new Grand Alliance.¹⁸ In the conferences that followed Heinsius was spokesman for the United Provinces, while Counts Goess and Wratislaw, the imperial envoys to the Hague and Great Britain, respectively, represented the Emperor. The aim of the alliance was agreed on with difficulty.¹⁹

Renouncing his earlier hope of recovering the whole Spanish succession, the Emperor insisted that besides the Spanish Netherlands he must have

¹¹ *Journals of the House of Commons*, XIII. 523.

¹² *Journals of the House of Lords*, XVI. 677.

¹³ Klopp, *op. cit.*, IX. 94 ff., 137 ff.

¹⁴ The text of the separate article containing this provision is given above, Doc. 85, note 10. The article was ratified by William III. as well as by the States General. A. F. Pribram, *Oesterreichische Staatsverträge: England*, I. 190, note 1.

¹⁵ Klopp, *op. cit.*, IX. 255, 256.

¹⁶ *Journals of the House of Commons*, XIII. 626.

¹⁷ Klopp, *op. cit.*, IX. 280, 281; Lamberty, *op. cit.*, I. 482, 483.

¹⁸ W. Coxe, *Memoirs of John, Duke of Marlborough*, I. 116-118; Klopp, *op. cit.*, IX. 281.

¹⁹ Pribram, *op. cit.*, I. 217, 218; Klopp, *op. cit.*, IX. 283 ff.

as satisfaction the former possessions of the Spanish crown in Italy. Heinsius at first opposed this demand, but Marlborough persuaded him to accept it. The Englishman desired to secure commercial advantages in the Mediterranean and Spanish America that would ensure his countrymen's support of the treaty. Doubtless it would be better for the maritime powers if the kingdoms of Naples and Sicily should be subject to Austria rather than to commercial France. Moreover, by conceding these kingdoms to Austria Marlborough gained the acceptance of an article, which he had much at heart, stipulating that eventual conquests made in Spanish America should remain to the English and Dutch. In defense of this proposal Heinsius and Marlborough insisted that nations are only moved "*spe praemii vel lucri*".²⁰ A religious interest, ostensibly predominant with the old councillors of the Emperor and the Jesuits in Vienna, had opposed alliance with the Protestant powers, led Goess and Wratislaw to insist on measures for safeguarding Catholicism in such Spanish-American lands as might be conquered by England and Holland.²¹ Marlborough refused to defend such a stipulation before Parliament.²² A compromise was effected, a postponement arranged. Provisions respecting the exercise of religion in conquered territory were to be agreed on among the allies when the treaties of peace were made.²³

On July 24 the project was adjusted.²⁴ At Vienna it caused disappointment. Among other things the Emperor regretted the inclusion of the article that would leave conquered Spanish-American lands to the maritime powers.²⁵ Yet, requiring the aid of these powers, he was obliged to accept this obnoxious condition. Few significant changes were, indeed, made in the protocol.²⁶ The treaty was signed by representatives of the three nations at the Hague on September 7, 1701.

A week later, upon the death of James II. at St. Germain, Louis XIV. immediately proclaimed the "pretended Prince" James as King of England, Scotland, and Ireland. War between England and France, already determined upon by the English government, now became inevitable.

A document supplementary, in a sense, to the Grand Alliance may be mentioned here. On November 11, 1701, Marlborough and the Dutch plenipotentiaries concluded an alliance of the closest character. It engaged the signatories to assist one another to prevent the King of France from ever dominating the Spanish Low Countries, or from seizing any lands belonging to the King of Great Britain or the States General. In case the said allies entered jointly into a war there should be an offensive and defensive alliance

²⁰ Pribram, *op. cit.*, I. 218, note 2.

²¹ An account of the attitude of the various parties at Vienna towards the alliance is given by Von Noorden, *Europäische Geschichte im Achtzehnten Jahrhundert*, I. 152-157.

²² Klopp, *op. cit.*, IX. 285; Pribram, *op. cit.*, I. 218.

²³ See arts. 9 and 10 of the treaty.

²⁴ Klopp, *op. cit.*, IX. 286.

²⁵ Pribram, *op. cit.*, I. 220.

²⁶ *Ibid.*, p. 221.

between them against those with whom they were at war. In making the peace particular care was to be had of the commerce and traffic of the two nations. As to sea affairs, they would govern themselves in case of war provisionally according to the treaty of April 29, 1689.²⁷ This alliance should be perpetual like that of March 1677/8, of which it should be regarded as a part.²⁸

BIBLIOGRAPHY.

Text: MS. Originals of the treaty are preserved in the Haus-, Hof-, und Staatsarchiv in Vienna, the Rijksarchief in the Hague, and the Public Record Office in London. Originals of the English ratification are in the Haus-, Hof-, und Staatsarchiv and in the Rijksarchief; that of the Emperor is said to be in the Public Record Office and Rijksarchief, and also in the Haus- Hof- und Staatsarchiv; and that of the States General is in the Haus-, Hof-, und Staatsarchiv. Cf. L. Bittner, *Chronologisches Verzeichnis der Oesterreichischen Staatsverträge*, vol. I. (1903), p. 118, no. 616, and Heinrich Ritter von Srbik, *Oesterreichische Staatsverträge: Niederlande*, vol. I. (1912), p. 333. These volumes are nos. 1 and 10 in *Veröffentlichungen der Kommission für Neuere Geschichte Oesterreichs*.

Text: Printed. A. F. Pribram, *Oesterreichische Staatsverträge: England*, vol. I. (1907), pp. 226-233, no. 3 in *Veröffentlichungen der Kommission für Neuere Geschichte Oesterreichs*; Heinrich Ritter von Srbik, *Oesterreichische Staatsverträge: Niederlande*, vol. I. (1912), pp. 343-350; G. de Lamberty, *Mémoires pour servir à l'Histoire du XVIII^e Siècle* (1724-1740), I. 620-628; J. Dumont, *Corps Diplomatique* (1726-1731), tom. VIII., pt. I., pp. 89-92; J. J. Schmauss, *Corpus Juris Gentium Academicum* (1730), II. 1153-1157. (Other printed texts are referred to in Bittner, *loc. cit.*)

²⁷ See Doc. 81, in vol. II. of this series.

²⁸ The text of the treaty is printed in J. Dumont, *Supplément au Corps Universel Diplomatique*, tom. II., pt. II., pp. 11, 12, and in translation in *MSS. of the House of Lords*, 1699-1702, vol. IV., n. s. (1908), pp. 397-400. The articles most relevant to the purpose of this volume are printed below, from Dumont.

"6. Et comme la seureté desdits hauts confederez consiste particulièrement en ce que les Pais-Bas Espagnols, comme les plus voisins de leurs estats, ne demeurent pas entre les mains du Roy T. C., ou que directement ou indirectement il en soit le maistre, comme presentement; ils s'engagent, aussy specialement de s'entraider avec toutes leurs forces à ladite recuperation, et après qu'ils seront recuperez, on considerera toujours aussy *pro casu foederis*, lors que le Roy T. C. voudra s'en emparer, directement ou indirectement, ou qu'il fasse faire des preparations pour les occuper ou y envoyer ses troupes: comme l'on fera aussy en cas, que le dit Roy T. C. voudroit s'emparer directement ou indirectement de quelques terres, ou pais appartenants audit Roy de la Grande Bretagne, ou auxdits Seigneurs Estats Generaux, ou qu'il fit des preparations pour les occuper, ou y envoyer des troupes. . . .

"10. En faisant la paix, on aura un soin particulier pour le commerce, et trafic des deux nations, comme aussy pour leur seureté, tant à l'égard des Pais-Bas Espagnols, que des pais adjacents.

"11. Pour les affaires de lar mer, ils se regleront, en cas de guerre, provisionnellement, jusques a ce qu'on aura disposé autrement, selon le traité fait à Whitehall le 29 d'Avril mil six cens quatre vingt neuf, qu'on tiendra à cet effet comme renouvelé, et inseré dans cette alliance entant que cela sera applicable à la presente constitution des affaires, et particulièrement à l'esgard des prises, de la proportion des vaisseaux de guerre et du conseil de guerre et ce qui en dependra."

Translations: English. *A General Collection of Treatys* (1732), I. 415-421; [J. Almon], *A Collection of all the Treaties between Great Britain and other Powers from the Revolution in 1688 to the Present Time* (1772), I. 40-45; *Collection of all the Treaties between Great Britain and other Powers from the Treaty signed at Münster in 1648 to the Treaties signed at Paris in 1783* (1785), I. 326-333. **French.** G. de Lamberty, *loc. cit.*

References: Contemporary and early writings. *Journals of the House of Lords*, XVI. 594-770, *passim*; *Journals of the House of Commons*, XIII. 332-639, *passim*; G. Groen van Prinsterer, *Archives ou Correspondance Inédite de la Maison d'Orange-Nassau*, sér. III., tom. III. (ed. F. J. L. Krämer, 1909), pp. 243-563, *passim*; G. de Lamberty, *op. cit.*, I. 391-628, *passim*; C. Cole, *Memoirs of Affairs of State* (1733), pp. 292-417, *passim*; O. Klopp, *Der Fall des Hauses Stuart* (1875-1888), Bd. IX., *passim*, Bd. X., pp. 21-44, *passim*; A. Gaedeke, *Die Politik Oesterreichs in der Spanischen Erbfolgefrage* (1877), II. *Acten und Urkunden*, pp. 93 ff.; A. F. Pribram, *op. cit.*, I. 210-226, foot-notes; Baron Sirtema de Grovestins, *Luttes et Rivalités Politiques entre les Puissances Maritimes et la France* (1851-1854), tom. VIII., ch. VIII., *passim*; G. P. R. James, *Letters illustrative of the Reign of William III. from 1696 to 1708, addressed to the Duke of Shrewsbury by James Vernon* (1848), III. 146, 147, 163, 164, 176-178; J. M. Kemble, *State Papers and Correspondence [1686-1707]* (1857), pp. 245-247; A. Legrelle, *La Diplomatie Française et la Succession d'Espagne* (1888-1892), tom. IV., ch. II., *passim*; C. von Noorden, *Europäische Geschichte im Achtzehnten Jahrhundert* (1870-1882), Abt. I., Bd. I., Buch I., cap. III., *passim*; W. Coxe, *Memoirs of John, Duke of Marlborough* (second ed., 1820), I. 125; J. Ralph, *England during the Reigns of King William, Queen Anne, and King George the First* (1744-1746), II. 899-989, *passim*.

References: Later writings. O. Klopp, *loc. cit.*; A. F. Pribram, *op. cit.*, I. 210-226; Heinrich Ritter von Srbik, *op. cit.*, I. 334-343; C. von Noorden, *loc. cit.*; Baron Sirtema de Grovestins, *loc. cit.*; L. von Ranke, *England* (1875), V. 264-274, *passim*; A. Legrelle, *loc. cit.*; A. Gaedeke, *op. cit.*, II. 114-133; W. Coxe, *op. cit.*, I. 115-127; [J. Wagenaar], *Vaderlandsche Historie* (1782-1811), XVII. 71-94; E. Lavisse, *Histoire de France* (1900-1910), tom. VIII., pt. I., pp. 79-87; R. Lodge, *England from the Restoration to the Death of William III., 1660-1702* (1910), pp. 436-446.

TEXT.²⁹

Gulielmus Tertius Dei gratia Magnae Britanniae, Franciae, et Hiberniae rex, Fidei defensor, etc. Omnibus et singulis ad quos praesentes literae pervenerint, salutem. Cum foedus inter nostros, et Sacrae Caesariae Majestatis, et Dominorum Ordinum Generalium Uniti Belgii, legatos extraordinarios et plenipotentarios, Hagae Comitum, die septimo mensis hujus Septembris, conditionibus et verbis quae sequuntur, conclusum et signatum fuerit,

Quandoquidem mortuo sine liberis non ita pridem gloriosissimae memoriae Carolo secundo Hispaniarum rege, sacra sua Caesarea Majestas successionem in regna et provincias regis defuncti domui suae augustae legitime deberi

²⁹ The text is from the original ratification by William III., preserved in the Haus-, Hof-, und Staatsarchiv in Vienna.

asseruerit, rex autem Christianissimus pro nepote suo, duce Andegavensi, eandem successionem ambiens et jus illi ex testamento quodam regis defuncti natum esse praeferens, pro modo dicto duce Andegavensi possessionem universae haereditatis sive monarchiae Hispanicae arripuerit, provincias Hispano-belgicas ducatumque Mediolanensem armis occupaverit, classem in portu Gaditano paratam teneat, naves plures bellicas ad Indias Hispano parentes miserit, atque hoc modo aliisque plurimis regna Galliarum et Hispaniarum tam arcte inter se uniantur et coalescant, ut posthac non aliter, quam pro uno eodemque regno considerata esse videantur, adeo ut nisi prospectum fuerit, satis appareat Caesareae suae Majestati abjiciendam esse omnem spem unquam sibi de praetensione sua satisfactum iri; sacrum Romanum imperium jura sua in feuda quae sunt in Italia et in Belgio-Hispanico perditurum; Britannis et Belgis Foederatis liberum navigationis et commerciorum usum in mare Mediterraneum, in Indias et alibi funditus periturum; Unitumque Belgium destitutum iri securitate, quam ex interpositis inter se et Gallos provinciis Hispano-Belgicis, vulgo barriere, tenebat; denique Gallos et Hispanos ita conjunctos adeo omnibus formidandos brevi evasuros, ut totius Europae imperium facile sibi vindicaturi sint, Quum autem ob hunc procedendi modum regis Christianissimi Caesareae suae Majestati necessitas imposita fuerit exercitum in Italiam mittendi ad conservanda tam jura sua privata quam feuda imperii, Rex Magnae Britanniae necessarium existimaverit copias suas auxiliares mittendi Belgio Foederato, cujus res eo loco sunt, ac si re ipsa jam aggressum foret, et domini Ordines Generales Uniti Belgii, quorum fines undique fere patent, effracto et remoto obice, vulgo barriere, qui Gallorum viciniam arcebat, coacti sint ea cuncta pro securitate et salute reipublicae suae facere, quae bello impetiti facere debuissent vel potuissent; Quumque tam anceps rerum constitutio ipso bello periculosior sit et hoc rerum statu Gallia et Hispania abutantur, ut se magis et magis inter se devinciant ad opprimendam Europae libertatem et tollendum commerciorum usum; his rationibus adducti Sacra sua Caesarea Majestas, Sacra sua Regia Majestas Magnae-Britanniae et Celsi et Praepotentes domini Ordines Generales Uniti Belgii tantis malis hinc surrecturis obviam tendentes et pro viribus remedia afferre cupientes arctam inter se conjunctionem et confoederationem pro depellenda communis periculi magnitudine necessariam esse existimaverunt et hunc in finem mandatis suis instruxerunt: Scilicet Sacra sua Caesarea Majestas nobilissimos, illustrissimos, et excellentissimos dominos, dominum Petrum Sacri Romani Imperii comitem à Goessen, dominum de Carelsbergh, Sacrae Caesareae Majestatis camerarium, consiliarium imperialem aulicum et ad Celsos et Praepotentes dominos Ordines Generales Uniti Belgii ablegatum extraordinarium, et dominum Joannem Wenceslaum, Sacri Romani Imperii comitem Wratislau a Mitrowitz, dominum de Ginets et Mallehitz, Sacrae Romanae et Hungariae Regiae Majestatis camerarium, intimae cancellariae aulico-Bohemicae consiliarium et assessorem necnon Sacrae Caesareae Majestatis ad Serenissimum Magnae-Britanniae Regem ablegatum extraordinarium, legatos suos extraordinarios et plenipotentarios; Sacra sua Regia Majestas Magnae-Britanniae nobilissimum, illustrissimum, atque excellentissimum dominum, dominum Joannem, comitem de Marlborough, baronem Churchill de Sandridge, Sacrae Regiae Majestati a consiliis intimis, copiarum pedestrium ducem, vulgo generalem, et summum exercitus memoratae Sacrae Regiae suae Majestatis in Belgio praefectum, legatum ejus extraordinarium, commissarium, procuratorem et plenipotentarium, et domini Ordines Generales, dominos Didericum Eck de Pantaleon, dominum de Gent et Erlekum; Fredericum baronem de Rheede, dominum de Lier, agri Sancti Antonii et de Ter Lee,

commendatorem Burae, unum nobilem et in ordine equestri Hollandiae et Westfrisiae conscriptum; Antonium Heinsium, dominorum ordinum Hollandiae et Westfrisiae consiliarium et syndicum, eorundem magni sigilli custodem ac feudorum praesidem; Wilhelmum de Nassau, dominum de Odijck, Cortgiene etc., primum nobilem et representantem ordinem nobilem in dominorum ordinum Zelandiae et eorundem deputatorum consensu; Everhardum de Weede, dominum de Weede, Dijkvelt, Rateles etc., fundi civitatis Oude-water dominum, capituli Sanctae Mariae quod Trajecti ad Rhenum est decanum, consiliarium primum et praesidem consensus provinciae Ultrajectinae, aggerum fluminis Leccae praefectum et praetorem; Wilhelmum van Haren, agri Biltani in Frisia grietmannum, universitatis Franequeranae curatorem, a parte nobilem in consensu dominorum ordinum Frisiae deputatum; Burchardum Justum a Welvelde in Buckhorst et Molekate, toparcham in Zallick et Vekaten, Ysselmuydani agri satrapam, et Wicherum Wichers, civitatis Groningensis senatorem, respective dominorum ordinum Gelriae, Hollandiae et Westfrisiae, Zelandiae, Ultrajecti ad Rhenum, Frisiae, Transsylvaniae et Groningae ac Omlandorum ad conventum dominorum Ordinum Generalium Uniti Belgii deputatos, qui vi mandatorum suorum in sequentes foederis leges convenerunt:

1. Sit maneatque inter Sacram Caesaream Majestatem, Sacram Regiam Majestatem Magnae-Britanniae et dominos Ordines Generales Uniti Belgii constans, perpetua, et inviolabilis amicitia et correspondentia teneaturque alter alterius commoda promovere, damna vero et incommoda pro posse avertere.

2. Sacra sua Caesarea Majestas, Sacra Regia Majestas Magnae Britanniae et domini Ordines Generales, cum nulla res ipsis magis cordi sit quam pax et tranquillitas generalis totius Europae, judicaverunt ad eam stabiliendam nihil efficacius futurum, quam procurando Caesareae suae Majestati, ratione praetensionis suae in successionem Hispanicam, satisfactionem aequam et rationi convenientem et ut Rex Magnae Britanniae et domini Ordines Generales securitatem particularem et sufficientem pro regnis, provinciis, ditionibus suis et pro navigatione et commerciis subditorum suorum adipiscantur.

3. Propterea foederati ante omnia operam dabunt quantam possunt maximam ad obtinendam via amicabile et per transactionem solidam et firmam Caesareae suae Majestati satisfactionem aequam et rationi convenientem in causa memoratae successionis et securitatem modo indigitatam Regiae suae Majestati Magnae Britanniae et dominis Ordinibus Generalibus Uniti Belgii, impendentque foederati in hunc finem omni studio et absque ulla intermissione spatium duorum mensium a die quo ratificationum tabulae commutabuntur numerandum.

4. Quod si praeter spem et vota intra tempus praefinitum res eo quo dictum est modo transigi nequeat, foederati sibi invicem spondent et promittunt, se alter alterum omnibus viribus adjuturos idque juxta specificationem peculiari in conventionem determinandam, ut ita acquirant satisfactionem et securitatem antememoratas.

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6. Licitum sit Regiae suae Majestati Magnae Britanniae et dominis Ordinibus Generalibus communi consilio pro utilitate et commodo navigationis et commercii subditorum suorum quas poterunt in Indiis Hispanicae ditionis terras et urbes armis occupare, quicquid autem occupaverint ipsorum manebit.

7. Necessitate exigente ut foederati ad obtinendam antedictam suae Caesareae Majestatis satisfactionem et regis Magnae Britanniae ac dominorum

Ordinum Generalium securitatem bellum subire adigantur, fideliter inter se consilia communicabunt de operationibus bellicis et de omnibus rebus ad causam hanc communem spectantibus.

8. Neutri partium fas sit bello semel suscepto de pace cum hoste tractare, nisi conjunctim et communicatis consiliis cum altera parte; nec pax ineatur nisi adepta prius pro Caesarea sua Majestate satisfactione aequa et rationi conveniente et pro Regia sua Majestate Magnae Britanniae et dominis Ordinibus Generalibus securitate particulari regnorum, provinciarum, ditionum, navigationis et commerciorum suorum, et nisi justis cautelis antea provisum sit ne regna Galliae et Hispaniae unquam sub idem imperium veniant et uniantur, nec unquam unus et idem utriusque regni rex fiat, et speciatim ne Galli unquam in possessionem Indiarum juris Hispanici veniant neque ipsis ibidem navigatio mercaturae exercendae causa sub quocunque praetextu directe vel indirecte permittatur; et denique nisi pacta pro subditis Regis Magnae Britanniae et Foederati Belgii facultate plena utendi et fruendi omnibus iisdem privilegiis, juribus, immunitatibus et libertatibus commerciorum terra marique in Hispania, mari Mediterraneo et in omnibus terris et locis, quae Rex Hispaniarum postremo defunctus tempore mortis tam in Europa quam alibi possedit, quibus tunc utebantur et fruebantur, vel quibus amborum vel singulorum subditi jure ante obitum dicti Regis Hispaniarum quaesito per tractatus, per pacta conventa, per consuetudines vel per alium quemcumque modum uti et frui poterant.

9. Tempore, quo dicta transactio vel pax fiet, foederati inter se convenient de omnibus iis, quae ad stabiliendam navigationem et commercia subditorum Regis Magnae-Britanniae et dominorum Ordinum Generalium in terris et ditionibus acquirendis et a postremo defuncto Hispaniarum rege possessis necessaria erunt, quemadmodum etiam de modo quo domini Ordines Generales per obicem antedictum, vulgo barriere, securi reddentur.

10. Et quoniam controversiae quaedam religionis ergo exoriri possent in locis a foederatis uti sperant armis occupandis, de exercitio ejus inter se etiam eodem quo supradictum est tempore convenient.

11. Foederati se invicem omnibus viribus juvare et opem ferre contra aggressorem teneantur, si Rex Christianissimus vel quisquam alius aliquem foederatorum ex causa hujus foederis aggredi sustineat.

12. Quod si vel nunc super saepe indigitata satisfactione et securitate transigi queat vel post susceptum necessario bellum pax iterum coalescat, post talem vel transactionem vel pacem conclusam sit et maneat semper inter partes contrahentes foedus defensivum pro guarantee ejusdem vel transactionis vel pacis.

13. Ad hujus foederis societatem admittentur cuncti reges, principes et status, qui volent et quibus pax generalis cordi est. Quoniam autem Sacri Romani Imperii peculiariter interest pacem publicam servari et hic inter alia agatur de recuperandis imperii feudis, ad hujus foederis societatem dictum imperium speciatim invitabitur. Praeterea foederatis conjunctim vel singulis seorsim licitum sit accessionem ad hoc foedus requirere, eorum quos requirere ipsis visum fuerit.

14. Ratihabebitur hoc foedus ab omnibus foederatis intra spatium sex septimanarum vel citius si fieri poterit.

In quorum fidem nos supramemorati plenipotentarii praesens foedus subscriptionibus et sigillis nostris munivimus. Hagae Comitum die septimo Septembris anni millesimi septingentesimi primi.

MARLBOROUGH.

Nos viso et perpenso foederi praefato, idem, in omnibus et singulis ejusdem articulis et clausulis, approbavimus, et ratum firmumque habuimus, sicut per praesentes pro nobis, haeredibus, et successoribus nostris, idem approbamus, et ratum firmumque habemus; spondentes verboque regio promittentes, nos omnia quae in praefato foedere continentur sincere, et bona fide, praestituros et observaturos, neque passuros, quantum in nobis est, ut a quopiam violetur aut diminuatur. In quorum majorem fidem et robur, hisce praesentibus manu nostra regia signatis, magnum nostrum Angliae sigillum apponi fecimus. Quae debantur in palatio nostro de Loo die vicesimo primo mensis Septembris anno Domini millesimo septingentesimo primo, regnique nostri decimo tertio.

GULIELMUS R.

TRANSLATION.

William III. by the grace of God king of Great Britain, France, and Ireland, defender of the Faith, etc. To all and singular to whom the present letters may come, greeting. Whereas a treaty was concluded and signed between our ambassadors extraordinary and plenipotentiary and those of his Sacred Imperial Majesty and of the lords the States General of the United Netherlands, at the Hague, on the seventh day of this month of September, with the conditions and terms that follow:

Whereas, since the recent death, without issue, of Charles the Second, King of Spain of most glorious memory, his Sacred Imperial Majesty has declared that the succession to the kingdoms and provinces of the deceased king lawfully belongs to his august house, but on the other hand, the Most Christian King, seeking to procure the same succession for his grandson the Duke of Anjou, and alleging that the latter derived this right from a certain will of the deceased king, has taken possession of the entire inheritance, or Spanish monarchy, in behalf of the aforesaid Duke of Anjou, has occupied by his troops the provinces of the Spanish Netherlands and the duchy of Milan, has a fleet ready in the port of Cadiz, has sent many ships-of-war to the Spanish Indies, and in this and very many other ways the kingdoms of France and Spain are so closely united and grown together that hereafter it may seem that they are not to be considered as other than one and the same kingdom; so that unless provision is made it is quite evident that his Imperial Majesty must cast aside all hope of ever satisfying his pretension; the Holy Roman Empire will lose its rights in its fiefs in Italy and in the Spanish Netherlands; the British and Dutch will entirely lose the free exercise of navigation and commerce in the Mediterranean, the Indies, and elsewhere; and the United Netherlands will be deprived of the security afforded them by the interposition of the provinces of the Spanish Netherlands, commonly called the barrier, between them and the French; and lastly the French and Spaniards being thus joined will in a short time become so formidable to all that they may easily arrogate to themselves empire over all Europe. Since, moreover, on account of this course of procedure of the Most Christian King, his Imperial Majesty has been obliged to send an army into Italy for the preservation of his private rights as well as of the fiefs of the empire, the King of Great Britain has deemed it necessary to send his auxiliary troops to the United Netherlands, where matters are in the same state as if war had already begun, and the lords the States General of the United Netherlands, whose frontiers are almost everywhere open, by the breaking and taking away of the barrier

that hindered the approach of the French, are forced to do all those things for the security and preservation of their republic that they should or could do if attacked by war; and since such an uncertain situation is more dangerous than war itself, and since France and Spain are taking advantage of this state of affairs to unite more and more closely for suppressing the liberty of Europe and destroying trade,—induced by these reasons, his Sacred Imperial Majesty, his Sacred Royal Majesty of Great Britain, and the High and Mighty lords the States General of the United Netherlands, striving to prevent the great evils that would arise thence, and desiring, to the extent of their power, to apply remedies thereto, have deemed a close union and alliance between themselves necessary for repelling the great common danger and to this end they have given orders and instructions; that is to say—his Sacred Imperial Majesty to the most noble, most illustrious, and most excellent lords, the Lord Peter, count von Goess of the Holy Roman Empire, lord of Carelsberg, chamberlain of his Sacred Imperial Majesty, imperial aulic councillor, and envoy extraordinary to the High and Mighty lords the States General of the United Netherlands, and the lord Johann Wenzel, count von Wratislaw Mitrowitz, of the Holy Roman Empire, lord of Ginetz and Malleschitz, chamberlain of his Sacred Royal Majesty of the Romans and of Hungary, councillor and assessor of the privy chancery of the court of Bohemia, and his Sacred Imperial Majesty's envoy extraordinary to the Most Serene King of Great Britain, his ambassadors extraordinary and plenipotentiary; his Sacred Royal Majesty of Great Britain, the most noble, most illustrious, and most excellent lord, the lord John, earl of Marlborough, baron Churchill of Sandridge, of his Sacred Royal Majesty's privy council, general of the foot, and commander-in-chief of his Sacred Royal Majesty's forces in the Low Countries, his ambassador extraordinary, commissary, procurator, and plenipotentiary; and the lords the States General, the lords Diederick van Eck van Panthaleon, lord of Ghent and Erlekum; Frederick, baron de Reede, lord of Lier, of the district of St. Anthony and Terlee, commander of Buren, one of the nobles and enrolled in the order of knighthood of Holland and West Friesland; Anthony Heinsius, councillor and pensionary of the lords the States of Holland and West Friesland, keeper of their great seal and president of the fiefs; William of Nassau, lord of Odijk, Kortgene, etc., first noble and representing the order of the nobility in the assembly of the lords the States of Zeeland and of their deputies; Everhard de Weede, lord of Weede, Dijkvelt, Rateles, etc., lord of the soil of the city of Oudewater, dean of the chapter of St. Mary's at Utrecht, first councillor and president of the assembly of the province of Utrecht, dykgrave of the river Lek; Wilhelm van Harren, grietman of the district of Bildt in Friesland, curator of the university of Franeker, deputy of the nobility in the assembly of the lords the States of Friesland; Burchard Joost de Welvelde in Buckhorst and Molekaten, lord of Zalk and Veecaten, draisart of Ijsselmuiden; and Wicher Wichers, senator of the city of Groningen, deputies respectively of the lords the states of Gelderland, Holland and Westfriesland, Zealand, Utrecht, Friesland, Overijssel, and Groningen and the Ommelands, to the assembly of the lords the States General of the United Netherlands, who by virtue of their commissions have agreed to the following articles of alliance:

1. There shall be and continue between his Sacred Imperial Majesty, and his Sacred Royal Majesty of Great Britain, and the lords the States General of the United Netherlands a constant, perpetual, and inviolable friendship

and correspondence; and each party shall be obliged to promote the advantage of the other and, so far as possible, to avert injuries and damages.

2. His Sacred Imperial Majesty, his Sacred Royal Majesty of Great Britain, and the lords the States General, having nothing more at heart than the peace and general tranquillity of all Europe, have deemed that nothing would be more effectual for establishing it than the procuring of just and reasonable satisfaction to his Imperial Majesty in regard to his pretension to the Spanish succession; and that the King of Great Britain, and the lords the States General, should procure particular and sufficient security for their kingdoms, provinces, and dominions, and for the navigation and trade of their subjects.

3. The confederates therefore shall before all exert themselves to the utmost to obtain, by amicable means and by a solid and firm agreement, just and reasonable satisfaction for his Imperial Majesty, on account of the said succession, and the above-mentioned security for his Royal Majesty of Great Britain and the lords the States General of the United Netherlands; and to that end the confederates shall employ two months' time, with great assiduity and without any intermission, to be reckoned from the day that the instruments of ratification shall be exchanged.

4. But if, contrary to their expectation and wishes, the matter cannot be accomplished in the manner aforesaid within the prescribed time, the confederates reciprocally engage and promise to assist one another with all their forces, according to the specifications to be agreed on in a particular convention, so that they may obtain the above-mentioned satisfaction and security.

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6. His Royal Majesty of Great Britain and the lords the States General shall be permitted to seize by arms, with common design, and for the benefit and advantage of the navigation and trade of their subjects, what lands and cities they can in the Indies subject to Spain; and whatever they shall seize shall remain theirs.

7. If necessity demands that the confederates be driven to enter into war for obtaining the aforesaid satisfaction of his Imperial Majesty and security of the King of Great Britain and the lords the States General, they shall faithfully communicate to one another their designs concerning military operations and all matters touching this common cause.

8. War having once been begun, neither party shall be permitted to treat for peace with the enemy, except jointly and after his designs have been communicated to the other party. Nor shall peace be made unless there has first been obtained just and reasonable satisfaction for his Imperial Majesty, and, for his Royal Majesty of Great Britain and the lords the States General, particular security of their kingdoms, provinces, dominions, navigation, and trade, and unless proper precautions are taken in advance in order that the kingdoms of France and Spain shall never come and be united under the same government, and in order that there shall never be one and the same king of both kingdoms, and, especially in order that the French shall never come into possession of the Spanish Indies nor be permitted, directly or indirectly, under any pretext whatever, to navigate there for the purpose of carrying on trade; and, lastly, unless full opportunity is stipulated for the subjects of the King of Great Britain and of the United Netherlands to exercise and enjoy all and the same privileges, rights, immunities, and liberties of trade by land and sea in Spain, in the Mediterranean, and in all the lands and places possessed by the recently deceased King of Spain at the

time of his death, both in Europe and elsewhere, that they then exercised and enjoyed, or that the subjects of both or either of them might have been able to exercise and enjoy, by reason of right acquired before the death of the said King of Spain, through treaties, through covenants arrived at, through customs, or through whatever other means.

9. At the time that the said agreement or peace shall be made, the confederates shall agree among themselves concerning all matters necessary for establishing the navigation and trade of the subjects of the King of Great Britain and of the lords the States General in the lands and dominions that they may acquire and that were possessed by the lately deceased King of Spain. They shall also agree upon how the States General may be rendered secure by means of the aforementioned barrier.

10. And since certain controversies on account of religion may arise in places that the confederates may, as they hope, occupy by their arms, they shall agree among themselves concerning the exercise of it, at the time mentioned above.

11. The confederates shall be obliged to aid and succor one another, with all their forces, against an aggressor, if the Most Christian King or any one else shall venture to attack any of the allies on account of this league.

12. But if an agreement can be reached concerning the matter of satisfaction and security, often mentioned, or if, after an unavoidable war, peace shall again be restored, after the conclusion of such agreement or peace, a defensive league for the guaranty of the said agreement or peace shall be and continue forever between the contracting parties.

13. All kings, princes, and states having at heart a general peace, and desiring to enter the society of this league, shall be admitted to it. And since the preservation of the public peace is of peculiar concern to the Holy Roman Empire, and since, among other matters, the recovery of the fiefs of the Empire is touched on here, the said Empire shall be especially invited to enter into the society of this league. Moreover the allies, either jointly or any of them separately, shall be permitted to invite those whom they please to come into the league.

14. This treaty shall be ratified by all the confederates within the time of six weeks, or sooner if possible.

In faith of which we the abovementioned plenipotentiaries have signed the present treaty with our hands and have secured it with our seals. At the Hague, September 7, 1701.

MARLBOROUGH.

Having seen and considered the aforesaid league, we have approved it in all and singular its articles and clauses, and we have considered it as fixed and settled, and by these presents we do approve it for ourselves, our heirs, and successors, and regard it as fixed and settled, pledging and promising by our royal word that we will fulfill and observe everything contained in the aforesaid league sincerely and in good faith, and, in so far as in us lies, we will not suffer it to be violated or diminished by anyone. For the greater faith and strength of which, after these presents were signed by our royal hand, we have caused our great seal of England to be affixed. Given in our palace of Loo on the twenty-first day of the month of September, in the year of the Lord 1701, and of our reign the thirteenth.

WILLIAM, King.

Treaty concerning assistance in the War of the Spanish Succession, concluded between the Emperor and Prussia at Vienna, December 16, 1702, N. S. Ratification by Prussia, December 23, 1702. [Ratification by the Emperor, February 23, 1703.]

INTRODUCTION.

Among the German princes whom William III. sought to draw into the Grand Alliance of 1701 was the first King of Prussia, the recently crowned Frederick I.¹ By the Imperial-Prussian treaty of secret defensive alliance of November 16, 1700,² renewing that of March 22/April 1, 1686,³ and relating particularly to the Elector Frederick's adoption of the royal title, with the Emperor's consent, Prussia was already pledged to aid Austria in a war over the Spanish succession. Before concluding a further treaty with the Emperor, Frederick made a treaty with Great Britain and the United Netherlands providing for his accession to the Grand Alliance.⁴ This was signed at the Hague on December 30, 1701, and at London on January 9/20, 1702. While negotiating this treaty Frederick's plenipotentiaries, Ezechiel von Spanheim and Wolfgang von Schmettau, strove to persuade the maritime powers, represented by Heinsius and Marlborough, to consent to a provision permitting Prussia to acquire an "establishment" in America.⁵ The Brandenburg-African Company needed such an establishment if it were to continue to furnish slaves to the American market. Its factory on the Danish island of St. Thomas in the West Indies had been brought to the verge of ruin by the dissensions there between Brandenburgers and Danes.⁶ Its efforts in past years to secure an island of its own in the Caribbean had been effectively opposed by the Spaniards, French, English, Danes and, probably, the Dutch.⁷

Certainly the present crisis, when the maritime powers stood in need of Prussia's aid, seemed to offer the latter an opportunity of obtaining a foot-

¹ For the Grand Alliance of 1701 see above, Doc. 90.

² J. Dumont and J. Rousset de Missy, *Supplément au Corps Universel Diplomatique* (1739), tom. II., pt. I., pp. 461-463, without the separate articles; and, complete, in Th. von Moerner, *Kurbrandenburgs Staatsverträge* (1867), pp. 810 ff.

³ Th. v. Moerner, *op. cit.*, pp. 750 ff.

⁴ Dumont and Rousset, *op. cit.*, tom. II., pt. II., pp. 12-14.

⁵ G. Groen van Prinsterer, *Archives de la Maison d'Orange-Nassau*, sér. III., tom. III., ed. F. J. L. Krämer (1909), pp. 563, 636, *passim*.

⁶ Cf. Docs. 78, 82, and 83, in vol. II. of this series; also R. Schück, *Brandenburg-Preussens Kolonial-Politik* (1889), I. 267-269.

⁷ Cf. Doc. 78, Introduction, in vol. II. of this series; Schück, *op. cit.*, I. 192, 207, 233-235; W. Westergaard, *The Danish West Indies under Company Rule* (1917), pp. 75, 80, 87-89.

hold in America.⁸ The Prussian plenipotentiaries having been instructed, on October 12, 1701, to try to gain permission from the maritime powers to acquire with their help an island on the American coast, perhaps Tobago,⁹ pressed the matter tenaciously.¹⁰ They represented that their king should be allowed, with the consent of the Emperor, to make an establishment in the West Indies, in a place where neither England nor the States nor their companies had any possessions.¹¹ Heinsius seems to have been willing to accede to their demands, in a separate article of the treaty, and with certain modifications.¹² But because of the jealousy of the English in regard to the American trade William III. refused to make any concessions, and Marlborough doubtless approved heartily of this decision.¹³

Prussia's obligation to aid the Emperor in the war rested, as has been said, on earlier treaties. Soon after Louis XIV.'s revocation of the edict of Nantes the Great Elector, Frederick William of Brandenburg, reversed his foreign policy by abandoning France and, on March 22/April 1, 1686, he concluded a secret defensive alliance with the Emperor Leopold. Comprehended in this alliance were to be all of the lands then held by both contracting parties, as well as territory accruing to them thereafter by succession or otherwise. It was specifically provided that if the King of Spain should die without descendants the Elector of Brandenburg should assist the Emperor to maintain his succession to the Spanish dominions.¹⁴ Since the King of Spain's death would probably give rise to a general war, the two allies were to enter into special negotiations together concerning means, conditions, and future action, each party being bound to aid the other in whatever part of their territories an attack or disturbance might be made.¹⁵ A fictitious published treaty, dated May 7, 1686, stipulated that if war arose out of the question of the Spanish succession the Elector of Brandenburg should not be obliged to send his forces into the "remote regions of Spain, Italy, the Indies, Belgium, or the hereditary kingdoms and provinces" of the Emperor;¹⁶ but there was no such limitation in the authentic treaty. The alliance of 1686 was continued, as has been said, by the *Kontraktat* of November 16, 1700, which however expressly provided that the 8000 troops furnished by Brandenburg to the Emperor should not be employed "over sea or in the kingdom of Naples", but only within the lands and fiefs of the Holy Roman Empire.¹⁷

⁸ In view of the approaching war with Spain a former captain of the company recommended to King Frederick that the island of Porto Rico might be occupied as compensation for debts long owed to Brandenburg by Spain. The letter is dated Oct. 15/25, 1701. Schück, *op. cit.*, I. 270.

⁹ V. Loewe, *Preussens Staatsverträge aus der Regierungszeit König Friedrichs I.*, p. 10.

¹⁰ Krämer, *Archives*, sér. III., tom. III., pp. 563, 567, 588, 612.

¹¹ *Ibid.*, pp. 588, 589, 593, 599.

¹² *Ibid.*, pp. 596, 612; V. Loewe, *op. cit.*, p. 11.

¹³ Krämer, p. 612.

¹⁴ Art. 7; Moerner, p. 483.

¹⁵ Arts. 8, 9, 10; *ibid.*

¹⁶ J. Dumont, *Corps Diplomatique*, tom. VII., pt. II., p. 128.

¹⁷ Art. 6; Moerner, pp. 674, 675.

The next treaty made between the Emperor and Frederick was signed on December 16, 1702, and is printed in part below. It provided, *inter alia*, for Prussia's admission into the Grand Alliance and into the peace to be made between Spain and France. The fourth article stipulated that in case the King of Prussia or one of his subjects should make an establishment in Spanish America, during the war, the Emperor should bring it about that in the future peace the king should enjoy all the advantages that the Emperor would concede to the maritime powers in their conquests in those parts.

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Text: MS. Originals of the treaty and of the Prussian ratification are in the Staatsarchiv at Vienna. Originals of the treaty and of the Imperial ratification are in the Staatsarchiv at Berlin.

Text: Printed. An abstract is printed in V. Loewe, *Preussens Staatsverträge aus der Regierungszeit König Friedrichs I.* (1923), pp. 24-26, in *Publikationen aus den Preussischen Staatsarchiven*, Bd. XCII.

References: Later writings. V. Loewe, *op. cit.*, I. 23, 24; R. Schück, *Brandenburg-Preussens Kolonial-Politik* (1889), I. 273.

TEXT.¹⁸

Wir Friderich von Gottes gnaden König in Preussen, Marggraff zu Brandenburg, des heyl. Röm. Reichs Ertzkämmerer und Churfürst, Souverainer Printz von Oranien, zu Magdeburg, Cleve, Jülich, Berge, Stetin, Pommern, der Cassuben und Wenden, auch in Schlesien, zu Crossen, Hertzog, Burggraf zu Nürnberg, Fürst zu Halberstadt, Minden und Camin, Graff zu Hohenzollern, der Marck, Ravensberg, Lingen, Meurss, Bühren und Leerdam, Marquis zu der Vehre und Vlissingen, Herr zu Ravenstein, der Lande Lauenburg und Bütow, auch Arlay und Breda, Thuen kund und fügen hiemit zu wissen, Demnach Wir gut und nöthig zuseyn erachtet, über die vorhin bereits mit der Römischen Kayserlichen auch zu Hungarn und Boheim Königl. Mays. habende Alliantzen und Foedera, mit deroselben des gegenwertigen frantzösischen Kriegs halber, Uns noch näher zu verbinden, auch zu solchem ende, der zwischen höchsterwehnter Ihrer Kays. Mays., der Crohn Engelland und dem Staat, der Königl. Hispanischen Succession halber vor einiger zeit aufgerichteten Bündniß, würcklich mit beyzutreten, Und dan dieser wegen zwischen Ihrer Kayserl. Mays. und Unseren dazu specialiter Bevollmächtigten Ministris und Rächten ein gewisser Tractat verabredet und unterzeichnet worden, welcher von Wort zu Wort also lautet:

Ob woll zwischen Ihro Kays. Mays. an einer- und Ihro Königl. Mays. in Preussen andererseits, bereits in Annis Sechszehen Hundert Sechs und Achtzig und Siebenzehen Hundert gewisse Bündnisse aufgerichtet und in Denenselben auch absonderlich verabredet und verglichen worden, wie es unter Ihnen auf den Fall, da der damals lebende König in Hispanien ohne Hinterlassung ehelicher Leibes-Erben, mit tode abgehen würde, bey der Succession in desselben hinterlassende Königreiche und Lande gehalten werden solte, Nachdem aber solcher Todesfall sich seither dem würcklich zugetragen,

¹⁸ The text is taken from the ratification by Prussia, preserved in the Staatsarchiv at Vienna.

auch dieser Succession halber zwischen höchsterwehnter Ihrer Kays. Mays., der Crohn Engelland und denen Herren General Staaten der Vereinigten Niederlande sub dato des Siebenden Septembris Siebenzehnen Hundert und Eins, ein besonderer Tractat aufgerichtet, Ihre Königl. Mays. in Preussen auch von Ihrer Kays. Mays. invitiret worden in solchen Tractat mit einzutreten, Als ist, nachdem Höchsterehnte Ihre Königl. Mays. die occasione solcher Succession dem gemeinen Wesen und absonderlich auch dem Heyl. Röm. Reich bevorstehende grosse gefahr und Schaden, reiflich bey sich erwogen, wegen solcher Ihrer verlangten Accession zu bemelter in Anno Siebenzehnen Hundert und Eins geschlossener Alliantz und einiger anderen Puncten, so zwischen Ihro Kays. Mays. und Sr. Königl. Mays. in Preussen, ietzo zu reguliren gewesen, zwischen Denenselben durch Ihre dazu Bevollmächtigte Ministros, als nemlich an Ihrer Kays. Mays. seits, dero Geheimen Raht und Obristen Hofmeister, Ferdinand Bonaventuram, Grafen von Harrach, so dan dero auch Geheimen Raht und Reichs Vice Cantzler, Dominicum Andream, Grafen von Caunitz und anseiten Ihrer Königl. Mays. in Preussen, dero Geheimen Raht und dermahligen Abgesandten [am] Kays. Hofe Christian Friderich von Bartholdi desfalls folgender Tractat geschlossen worden.

1. Anfänglich erklären sich Ihre Königl. Mays. in Preussen, dass Sie in die vorangeregte der Spanischen Succession halber, zwischen Ihrer Kays. Mays., der Crohn Engelland und dem Staat der Vereinigten Niederlande in des Grafen Haag den Siebenden Septembris Siebenzehnen Hundert und Eins geschlossene grosse Alliantz mit eintreten, dieselbe in allen Ihren Articulen, Puncten und Clausulen ratificiren und genehm halten, auch dasjenige, was darin stipuliret, verglichen und verabredet worden, zu seinem effect und würcklichkeit bringen helfen wollen, nicht anders als wen solche Alliantz mit Ihro Königl. Mays. selbst aufgerichtet und Dieselbe bald anfangs mit darin begriffen gewesen were. Allermassen dan auch Ihre Kays. Mays. höchstere Ihre Königl. Mays. in vorberührte, der Spanischen Succession halber aufgerichtete Alliantz mit aufnehmen, dergestalt dass Dieselbe der, den übrigen Compaciscenten darin versprochenen avantagen, sich ebenfalls plenissime zu erfreuen haben solten.

2. Gleich wie die vorangeregte in Annis 1686 und 1700 zwischen Ihro Kays. Mays. und Ihro Königl. Mays. in Preussen aufgerichtete Foedera, alles ihres inhalts hiemit bestens confirmiret, renoviret und bestättiget werden. Solche versprechen auch Ihre Königl. Mays. in Preussen nochmalen, dass Sie nicht allein allem dem so in solchen Alliantzen der Spanischen Succession halber vor das Interesse Ihrer Kays. Mays. und dero Ertzhauses zu thun über sich genommen, getreulich nachkommen, sondern auch, wan durch des Höchsten gnade die gegenwertige Polnische Troubles dergestalt, dass Ihre Königl. Mays. darauss weiter keine ungelegenheit zu befahren habe, gestillert seyn werden, über die anzahl der Völcker, welche Sie Ihrer Kayserl. Mays. und der Crohn Engelland und denen General Staaten der Vereinigten Niederlande auss denen vorhergehenden besonderen Tractaten zu geben schuldig, noch mit einem guten Corpo, wenigstens von Siebentaused Mann, gegen Frankreich agiren und denen Allirten nach nehrerm inhalt des zehenden Articuli des vorhin mit Engell- und Holland albereits errichteten Accessions-Tractats zu hülfe kommen wollen.

3. Und gleichwie in bemelter Grossen Alliantz Art: 8^{vo} bereits versehen, dass, nachdem es wegen dieser Spanischen Successions-Sache einmahl zum Kriege gekommen, der Friede anders nicht, als gesanter Hand und communicatis consiliis gemachet werden solle, Also versprechen Ihre Kayserl.

Mays. hiemit absonderlich, dass Sie mit denen Crohnen Frankreich und Hispanien, anderer gestalt keinen Frieden machen wollen, es sey dan dass Ihre Königl. Mays. und zwar als König in Preussen dabey tanquam pars principaliter compatisicens admittiret und eingeschlossen, und auch dergestalt von beyden Crohnen vor König in Preussen, mit Beylegung der denen übrigen Europäischen Königen und dero Gesandtschaften gebührender praerogativen und Ehrbezeugungen agnosciret und erkant werden.

4. Wan Ihre Königl. Mays. unter wehrendem diesem Kriege sich ein- oder ander Orts in denen unter Spanischer Bottmässigkeit gehörigen Indien durch Ihre Schiffe und Unterthanen bemächtigen werden, in demselben wollen Ihre Kays. Mays. Ihnen alle die Vorthail geniessen lassen, welche Sie der Crohn Engelland und denen General Staaten in denen durch Ihre Kriegs Macht alda einnehmenden Orten bey künftigem Frieden einräumen oder verwilligen werden.

9. Nach dem auch Seiner Königl. Mays. in Preussen aus denen mit dem verstorbenen König in Spanien gemachten Tractaten an noch grosse Forderungen an dessen Erbfolger haben, So versprechen Ihre Kays. Mays. dass Sie, fals Sie, oder Ihr Ertzhauss die Spanische Monarchie behaupten, Ihrer Königl. Mays. sothane Prätionen in leidentlichen terminis abtragen. Da Sie aber zur völligen Succession nicht gelangen solte, solche Schuld pro rata Ihres antheils über sich nehmen, auch neben Ihren Alliirten befördern helfen und so viel an Ihro ist, darauf bestehen wollen, dass solchenfals bey künftigen Friedens Tractate ein gleiches von dem oder denen Jenigen, so etwas von der Spanischen Succession participiren mögten, übernommen, und effective prästiret werde. Allenfals und da dieses bey dem Friedens Schluss nicht zu erlangen were, Seind Ihre Kays. Mays. erbietig, fals Sie die Spanische Niederlande behaupten, Sr. Königl. Mays. derjenigen Schulden halber, worauf Ihro in besagten Niederlanden die Fundi bereits angewiesen, Satisfaction zu geben, und Ihro zu dem ende biss zu deren abtilgung dieselbe Versicherung oder Fundos anzuwenden.

12. Es soll dieser Tractat innerhalb Vier Wochen à dato dessen ratificirt werden, und die Auswechselung solcher Ratificationen geschehen.

Dessen zu Uhrkund sind von diesem Tractat zwey gleichlautende Instrumenta gemacht, und von obgedt. beyderseits dazu Bevollmächtigten Ministris und Geheimen Rächten eigenhändig unterschrieben. So geschehen zu Wien den 16. Decemb. Anno 1702.

F. B. G. v. HARRACH D. A. G. v. CAUNITZ C. F. v. BARTHOLDI

Dass Wir solchen Tractat in allen seinen Puncten, Clausulen, Articulen und gantzem Begriff approbiren, ratificiren und genehm halten, Thuen auch solches und ratificiren denselben hiemit und kraft dieses dergestalt und also, dass Wir schuldig und gehalten seyn wollen und sollen, allem demjenigen, so an Unsererseits in obinserirtem Tractat versprochen, gelobet und zugesaget worden, genau und unverbrüchlich nachzukommen und daran nie einigen Fehl oder Mangel erscheinen zu lassen, Alles bey Unserm Königl. Wort und Glauben. Des zu Uhrkund haben Wir dieses eigenhändig unterschrieben und mit Unserm Königl. Insiegel bedrücken lassen. So geschehen und gegeben zu Cölln an der Spree den 23. Decembris Anno 1702.

FRIDERICH R.

GRAF v[ON] WARTENBERG.

Ratificatio des Accessions-Tractats

TRANSLATION.

We, Frederic, by the grace of God, king of Prussia, margrave of Brandenburg, arch-chamberlain and elector of the Holy Roman Empire, sovereign prince of Orange, duke of Magdeburg, Cleve, Jülich, Berg, Stettin, Pomerania, of the Cassubians and Wends, and of Crossen in Silesia, burgrave of Nuremberg, prince of Halberstadt, Minden, and Cammin, count of Hohenzollern, the Mark, Ravensberg, Lingen, Meurs, Büren, and Leerdam, marquis of Veere and Flushing, lord of Ravenstein, of the lands of Lauenburg and Bütow, of Arlay and Breda, give notice and hereby make known, that Whereas we have deemed it fitting and necessary, over and above the alliances and compacts already heretofore existing with his Imperial Roman and Royal Hungarian and Bohemian Majesty, to bind ourselves still more closely with the same on account of the present French war, and to that end to enter effectively into the league heretofore concerted between the aforesaid Imperial Majesty, the crown of England, and the State [*i. e.*, of the United Netherlands], with regard to the Spanish Succession, accordingly there has been concerted and signed, between ministers and councillors of his Imperial Majesty and of ourselves, specially invested with full powers to that end, a certain treaty, which reads word for word as follows:

Although in the years 1686 and 1700 certain covenants were made between his Imperial Majesty on the one hand and his Royal Majesty of Prussia on the other hand, and in them it was especially concerted and agreed in what manner they, in case the then living King of Spain should die without legitimate heirs, should act in respect to the succession in the kingdoms and lands left by him, yet after death had actually befallen him a special treaty was concerted in respect of that succession, under date of September 7, 1701, between his aforesaid Imperial Majesty, the crown of England, and the Lords States General of the United Netherlands, and his Royal Majesty of Prussia was invited by his Imperial Majesty to accede to that treaty, thereupon, after his aforesaid Royal Majesty had maturely considered the great danger and harm threatening the common weal and especially the Holy Roman Empire, in respect of such succession, the following treaty, on account of his desired accession to the said alliance concluded in 1701 and certain other points that were now to be adjusted between his Imperial Majesty and his Royal Majesty of Prussia, was concluded between them by their ministers thereto plenipotentiary, to wit, on behalf of his Imperial Majesty his privy councillor and high steward Ferdinand Bonaventura, Count of Harrach, and his privy councillor and vice-chancellor of the Empire Dominic Andrew, Count of Caunitz, and on behalf of his Royal Majesty of Prussia his privy councillor and then ambassador at the imperial court Christian Frederic von Bartholdi.

1. First, his Royal Majesty of Prussia declares that he enters into the Grand Alliance heretofore concluded at the Hague on the seventh of September, 1701, on account of the Spanish Succession, between his Imperial Majesty, the crown of England, and the state of the United Netherlands, ratifies and accepts the same in all its articles, points, and clauses, and will help to bring into effect and force what was therein stipulated, concerted, and agreed upon, in the same manner as if that alliance had been arranged with his Royal Majesty and the same had from the beginning been included therein. Moreover in all respects his Imperial Majesty receives his said Royal Majesty into the said alliance concerted on account of the Spanish Succession, in such

manner that the latter shall be entitled in the fullest measure to enjoy the advantages therein promised to the other contracting parties.

2. Likewise the forementioned treaties concerted in the years 1688 and 1700 are in their entire contents hereby confirmed, renewed, and established. Furthermore his Royal Majesty again promises, not only that he will faithfully perform all that in these alliances on account of the Spanish Succession he undertook to do in the interest of his Imperial Majesty and his hereditary house, but that, if through the favor of the Most High the present Polish troubles are to such a degree appeased that his Royal Majesty has no further inconvenience to apprehend from them, he will over and above the number of troops which by the special treaties mentioned he is under obligation to supply to his Imperial Majesty and the crown of England and the States General of the United Netherlands, still further act against France with a good force, of at least seven thousand men, and come to the help of the allies in accordance with the exact terms of the tenth article of the treaty of alliance heretofore concerted with England and Holland.

3. And even as in Article 8 of the aforesaid Grand Alliance it has already been provided that, when war has once arisen on account of this matter of the Spanish Succession, peace shall not otherwise be made than jointly through plans mutually made known, his Imperial Majesty hereby expressly promises that he will make no peace with the crowns of France and Spain on any other terms than that his Royal Majesty, distinctly as King of Prussia, shall be admitted and included therein as a principal party, and shall be recognized and acknowledged by both crowns as King of Prussia, with attribution of the prerogatives and honors appertaining to the other European kings and their embassies.

4. If his Royal Majesty during the continuance of this war shall by his ships or subjects possess himself of one or another place in the Indies belonging under Spanish dominion, his Imperial Majesty will allow them to enjoy all the advantages which he shall in the future peace concede or allow to the crown of England and the States General in the places there to be captured by their war forces.

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9. In case his Royal Majesty of Prussia, by reason of treaties made with the late King of Spain, shall still have large demands upon his hereditary successors, his Imperial Majesty promises that, if he or his house maintain a claim to the Spanish monarchy, he will satisfy those claims on allowable terms. If however he should not obtain the entire succession, he will take such debt upon himself *pro rata* for his share, he will aid in pressing it upon his allies, and so far as lies in his power will insist that in such case, in any future treaty of peace, a like provision shall be undertaken and effectively carried out, by that one or those that shall receive any share in the Spanish Succession. In any case, and if the above is not to be obtained in the concluding of peace, his Imperial Majesty offers, in case he obtains the Spanish Netherlands, to give satisfaction to his Royal Majesty on account of those debts, for which the funds have already been assigned to him in the said Netherlands, and to that end to apply to him, toward their discharge, the same insurance or funds.

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12. This treaty shall be ratified, and the ratifications exchanged, within four weeks from its date.

In testimony hereof two identical instruments of this treaty have been made, and signed, with their own hands, by the ministers and privy councillors invested on both sides, as above recited, with full powers for that purpose. Done at Vienna, the sixteenth of December, in the year 1702.

F. B. Count of HARRACH. D. A. Count of CAUNITZ. C. F. VON BARTHOLDI.

That we approve, ratify, and accept the said treaty in all its provisions, clauses, articles, and entire tenor, and do so and ratify the same hereby in such manner, that we will and shall be held under obligation to observe exactly and inviolably all that has been promised, engaged, and affirmed on our side in the treaty above inserted, and never to allow any failure or defect to occur therein; all on our royal word and faith. In testimony whereof we have signed this with our own hand and caused it to be sealed with our royal seal. Done and given at Cölln on the Spree, the twenty-third of December in the year 1702.

FREDERIC, king.

Count VON WARTENBERG.

Ratification of the Treaty of Accession.

Treaty of offensive and defensive alliance between Austria, Great Britain, the United Netherlands, and Portugal, concluded at Lisbon, May 5/16, 1703. Ratification by Austria, July 3, 1703, N. S. [Ratification by Great Britain, July 14, 1703, O. S.; by Portugal, August 10, 1703, N. S.; by Charles III. of Spain, September 13, 1703, N. S.]

INTRODUCTION.

In entering into the Grand Alliance¹ England and the United Provinces aimed at preserving, perhaps at extending, their trade by preventing France from dominating Spain and Spanish America.² The treaty of alliance did not clearly specify by whom Spain and her colonies were to be ruled, except that the sixth article gave the maritime powers the right to retain any conquests made by them in the Indies. The Austrian government repented of this concession,³ and William III., who was pressing for the Emperor's acceptance of an additional article respecting the "pretended Prince of Wales", seemed prepared to surrender it. In return for an Austrian promise of free trade

¹ See above, Doc. 90.

² Daniel Defoe, commenting on the treaty of partition in 1700, put the matter clearly: "To let the French possess the Spanish dominions, would overthrow the ballance purchased in this war with so much blood and treasure, and render fruitless the treaty of Reswick. 'Twould especially have been fatal to the English and Dutch, by the encrease of wealth from the mass of money returning yearly from the empires of Mexico and Peru, which the French would be better husbands of than the Spaniards; by their encrease of shipping, which would make them too strong for all the world at sea, and by their ruining the Spanish trade, which is the greatest and most profitable in Europe; 'twould immediately unhinge all the settlement of our merchants and factories and turn the whole channel of trade; for the ports of Spain being free to the French as subjects, all our negoce that way would be destroyed, then their neighbourhood in Flanders and in the West Indies would be intollerable and insupportable. 'Twould fill a volume to set down the inconveniencies which England and Holland must expect to feel, in case the French were masters of the Spanish monarchy . . . your fishing trade from New-England and Newfoundland would perish, for the French from the Banks of Newfoundland should go free, and you pay 23 per cent. etc. We must erect an Admiralty in the West Indies, or maintain a fleet there, or our plantations would be always at his mercy; our colonies of Virginia, and New England, would easily be destroyed, while the French would lye on their backs quite through their country from Canada to the City of Mexico." "The Two Great Questions considered: First, What the French King will do, with respect to the Spanish Monarchy? Second, What Measures the English ought to take?", in *The Genuine Works of Mr. Daniel Defoe* (n. d.), I. 359, 360. William Paterson described, in 1701, the means by which England might gain control of the entire Spanish-American trade and navigation. *Writings*, ed. S. Bannister (second ed., 1859), I. 139-160.

³ J. Vernon, *Letters illustrative of the Reign of William III.* (ed. G. P. R. James, 1841), III. 175-178, 180, 181, 185, 186; Klopp, *Der Fall des Hauses Stuart*, IX. 469, 470. On the additional article to the treaty of alliance see above, p. 78.

for the English and Dutch in Spanish America, William III. agreed that the maritime powers should acquire those lands for the Emperor.⁴ He desired the Emperor and through him the Pope to send Catholic ecclesiastics to sail with the English fleet, to persuade the Spanish governors and Catholic Indians to transfer their allegiance from the house of Bourbon to that of Austria, and to assure them that the English and Dutch were acting in Austria's interest.⁵ He dispatched instructions to Vice-Admiral Benbow,⁶ in West Indian waters, to discover the sentiments of the Spaniards and natives in America toward Austria and France. If they wished to withdraw from France the English would aid and protect them. If they could be induced to submit to Austria, England would be friendly and furnish them with goods desired for defence or in the way of trade. If they were resolved to be independent of any European prince, Benbow was to bring them to rely upon England's friendship, and to open a free trade with Englishmen. If they wished England's protection or aid, he was to try "by all fair means" to get possession of one or more of their ports, Havana if possible. If they adhered to the French he was to treat them as enemies. He was to cut off the French trade in negroes and supplies.

For a while Queen Anne's government adhered to William III.'s West Indian policy. It was planned that after the naval expedition against Cadiz should have secured Spain for the Archduke Charles, another Anglo-Dutch fleet under command of the Earl of Peterborough should attempt to bring the Spanish colonies under the sway of the house of Austria.⁷ About the beginning of October, 1702, a Dutch project for an Imperial declaration was laid before the Emperor.⁸ It set forth the rights that the house of Austria should grant to the English and Dutch in those Spanish colonies which they should reduce to Austrian obedience. In these conquered colonies subjects of Queen Anne and of the States General were to have free trade, to the exclusion of all others, except subjects of the Emperor or Archduke. Only they among foreigners could export gold, silver, and jewels, import negroes, and dwell in these colonies, where the officials would protect them from molestation. Finally, the Emperor was to undertake for himself, the Archduke, and his house that the costs of the expedition, if successful, should be repaid to the English and Dutch out of the revenues of the conquered colonies. The Emperor did not refuse to make this declaration; neither did he issue it.⁹

⁴ Vernon, *op. cit.*, III. 177, and Instructions to Benbow, Feb. 19, 1702, summarized below, P. R. O., St. Pap. Dom., Entry Book, 206/7.

⁵ Klopp, *op. cit.*, IX. 469, 470, X. 246, 247; *Cal. St. Pap. Dom.*, 1702-1703, p. 131; Srbik, *Oesterreichische Staatsverträge: Niederlande*, I. 359 and note 1, 360.

⁶ These instructions are in the P. R. O.; see note 4, above; *cf.* also *Cal. St. Pap. Col.*, 1702, pp. 316-323, and *Cal. St. Pap. Dom.*, 1702-1703, pp. 87, 174, 176.

⁷ Klopp, *op. cit.*, X. 246; Srbik, *op. cit.*, p. 359; *Cal. St. Pap. Col.*, 1702-1703, pp. 94, 128, 169, 536. It is interesting to note that Admiral Benbow believed that before the Spanish-Americans would change their allegiance "there must be set up one of the Austrian family in Old Spaine, for they will be very cautious to declare without a certainty". *Cal. St. Pap. Col.*, 1702, p. 316, no. 473.

⁸ The document is printed in Srbik, *op. cit.*, I. 367-370.

⁹ *Ibid.*, I. 360.

After the failure at Cadiz the Anglo-Dutch expedition against the West Indies in behalf of the house of Austria was abandoned.¹⁰ The Secretary of State, the Earl of Nottingham, informed the representative of Austria in London that conquests made in the West Indies must come under the dominion of the maritime powers.¹¹ On the other hand, England and finally the Netherlands agreed to send a fleet into the Mediterranean, in accordance with the Emperor's desire, after the alliance with Portugal was concluded.¹²

The maritime powers and the Emperor had been greatly troubled, in the summer of 1701, by the conclusion of the treaties between Portugal and the two Bourbon crowns.¹³ The Imperial and British representatives at Lisbon, Count Waldstein and Paul Methuen, tried to persuade the King of Portugal to observe neutrality in the approaching war.¹⁴ If he agreed to this they hoped afterwards to win his alliance.¹⁵ Pedro II. had to be shown on which side his interest lay. His coasts required protection by the stronger naval force, whichever that might be. He did not wish the Portuguese Royal Guinea Company (or Cacheo Company), in which he had a large pecuniary interest, to lose the sums which in accordance with article 11 of the *Transacción* of June 18, 1701, Spain was to pay it upon the arrival of the first flota, flotilla, or galleons coming from Spanish America after the signing of the above-mentioned Spanish-Portuguese treaties.¹⁶

About the time of the declarations of war against France by the Emperor, Queen Anne, and the States General, on May 4/15, 1702, John Methuen, father of Paul, and Schonenberg, representing the United Netherlands, arrived in Lisbon to take part in the negotiations.¹⁷ Pedro II. gave them to understand that he expected soon to be free from his treaty obligations to France through the failure of that crown to send the aid stipulated and required by Portugal,¹⁸ and that he would incline to that side whose fleet first appeared in the river Tagus.¹⁹ The French King having failed to send the

¹⁰ Klopp, *op. cit.*, X. 246; *Cal. St. Pap. Dom.*, 1702-1703, p. 255.

¹¹ Klopp, *op. cit.*, X. 248; Srbik, *op. cit.*, I. 360.

¹² For the Spanish-Portuguese treaties see above, Docs. 87 and 88. The Franco-Portuguese treaty is described in the Introduction to Doc. 87.

¹³ Mayer, "Die Allianz Portugals", pp. 4 ff.

¹⁴ Heinsius wrote to William III. on Feb. 4, 1702, "Ick ben blijde dat U. M. ordres heeft gegeven in Portugal om, was't doenlijck, die koning te winnen; soo men hem eerst kan brengen tot een specie van neutraliteit, sal ligt de rest daerna wel volgen." Krämer, *Maison d'Orange-Nassau*, sér. III., tom. III. (1909), p. 651.

¹⁵ See above, p. 49. Paul Methuen, writing to Secretary Vernon on Nov. 16, 1701, reports that Waldstein "was afraid a neutrality would not be obtained without money or at least a promise to make good what the Spaniards are obliged to pay the Portuguese Cacheo Company, if the payment of it should be refused upon that account. That in case it could not be obtained otherwise he believed the Emperor would be willing to pay his share of the money in an equal proportion with England and Holland". Methuen believed "that the ill posture of the Cacheo Company's concerns in which the King himself was deeply concerned, gave the first rise to their late treaties with France and Spaine, so it may perhaps happen that the same consideration may have the like influence on their Councils and resolutions in the present conjuncture". P. R. O., St. Pap. For., Portugal, no. 18.

¹⁶ Mayer, *op. cit.*, pp. 6-8.

¹⁷ J. Methuen to Secretary Nottingham, May 19, 1702, Brit. Mus., Add. MSS. 29590, f. 30.

¹⁸ Mayer, *op. cit.*, pp. 8, 9; Add. MSS. 29590, ff. 52, 62.

warships demanded, and Rooke's fleet having arrived at the mouth of the Tagus, Pedro II. declared himself freed from the French alliance.¹⁹

John Methuen at once, and without the knowledge of Waldstein and Schonenberg, began to make liberal offers calculated to draw Pedro II. into the Grand Alliance. Portugal's coast and commerce would be protected and her frontiers enlarged. She would be given commercial privileges and an important port in the Spanish West Indies.²⁰ Despite these and further offers, in particular of subsidies,²¹ Pedro II. continued for a while to cling to his neutrality. He wished to be assured that the attempt to take Spain from the Duke of Anjou would succeed.²² England's failure at Cadiz made a bad impression upon him,²¹ and the arrival of the Spanish treasure ships at Vigo gave him hopes that the existing Spanish government would soon pay the sums due to the Cacheo Company.²² The destruction or capture of the galleons at Vigo by an Anglo-Dutch fleet, in October, 1702,²³ and the arrival in Lisbon at about that time of the Admiral of Castile, as a supporter of the Archduke's succession,²⁴ inclined Pedro II. toward the Alliance. In January, 1703, he made his conditions known.²⁵ The English government considered them too unreasonable to serve as a basis for negotiations.²⁶ John Methuen and Schonenberg reduced them to what they considered an acceptable *projet*, but could not get Waldstein to agree. He strongly objected to ceding places in Spain to Portugal, offering instead the Philippines or other islands.²⁷ The chief impediment to an accord was the Emperor's reluctance to send the Archduke to Spain—a provision regarded by Pedro II. as essential.²⁸ The Emperor considered that Spanish Italy must be secured before the adventure in Spain was undertaken. Finally he yielded, committing to Queen Anne the management of the whole negotiation.²⁹ On May 5/16 the treaty was signed.

The treaty provided that the three allies together with Portugal should endeavor to put the Archduke Charles in possession of all Spain, as it had been possessed by the Catholic King Charles II. It set forth the forces, subsidies, and arms to be furnished by the signatory powers for this end. No peace or truce was to be made except by the mutual consent of all the allies, nor while any French prince remained in Spain, nor unless the King of France abandoned his pretensions to certain lands of the state of Maranhão in Brazil. The allied powers also promised the defense or restoration of Portu-

¹⁹ J. Methuen (to Nottingham?), Aug. 25, O. S., 1702, *ibid.*, f. 106; Klopp, *op. cit.*, X. 190.

²⁰ Add. MSS. 29590, *loc. cit.*

²¹ J. Methuen (to Nottingham?), Sept. 23, O. S., 1702, *ibid.*, ff. 130, 131.

²² Methuen to Nottingham, Nov. 1/12, 1702, *ibid.*, f. 153.

²³ A full account of this affair is given by M. Calmon-Maison, "Les Galions de Vigo", in the *Revue des Deux Mondes*, période 5, tom. XV. (May-June, 1903), pp. 112-149.

²⁴ Mayer, *op. cit.*, pp. 16 ff.

²⁵ Jos. de Faria to Methuen, Jan. 7, 1703, Add. MSS. 29590, ff. 185, 187; Methuen to Nottingham, *ibid.*, f. 205.

²⁶ *Cal. St. Pap. Dom.*, 1702-1703, pp. 570, 571.

²⁷ Methuen to Nottingham, Feb. 20, O. S., 1703, Add. MSS. 29590, f. 219.

²⁸ *Cal. St. Pap. Dom.*, 1702-1703, p. 632; Mayer, *op. cit.*, pp. 21 ff.

²⁹ *Cal. St. Pap. Dom.*, 1702-1703, p. 656.

gal's colonies. After the Archduke had conquered Spain he was to pay to the King of Portugal and the Cacheo Company the sum due from Spain by virtue of the eleventh article of the *Transacción*.³⁰ Portugal was not obliged to make war until the Archduke had landed on his shores. Two secret and separate articles provided that after the right to be King of Spain and of the West Indies was lawfully transferred to the Archduke he should cede Badajoz and several other Spanish towns to Portugal, as well as any rights that he might have to the countries north of the Rio de la Plata.

After the conclusion of this treaty, the suspicion of the Emperor and the ambition of the maritime powers remained as before. The objects of their emotions are indicated by the Imperial *projet* of July, 1703, proposed as a separate article of the Grand Alliance, and the English counter-project of August, 1703.³¹ The Imperial *projet* stated that whereas, in conformity with the recent treaty between the allies and Portugal, some places pertaining to the Spanish monarchy had been ceded by the Emperor to Portugal, the allies agreed, with respect to the rest of the Spanish monarchy, not to make peace with France or any Bourbon prince or their adherents until all and every part of the Spanish monarchy should be taken from the house of Bourbon and restored to the house of Austria. The English counter-project repeated this provision in substance, but excepted from the stipulated restitution any territory conquered by the English or Dutch in Spanish America during the war. Such conquests were to remain in the possession of their captors, as provided by the sixth article of the Grand Alliance. Since the Emperor would not accept this modification of his *projet*, nor the English to relinquish it, and since the Grand Pensionary of Holland made difficulties, the *projet* was not signed.³²

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³⁰ See above, Doc. 88.

³¹ The Imperial *projet* is printed in Srbik, *op. cit.*, I. 370, 371. The English counter-project is *ibid.*, pp. 371-373, and Pribram, *Oesterreichische Staatsverträge: England*, I. 240-242.

³² Pribram, *op. cit.*, I. 240.

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TEXT.³³

Nos Leopoldus divina favente clementia electus Romanorum imperator semper augustus, ac Germaniae, Hungariae, Bohemiae, Dalmatiae, Croatiae, Sclavoniae, rex, archidux Austriae, dux Burgundiae, Brabantiae, Styriae, Carinthiae, Carniolae, marchio Moraviae, dux Lucemburgiae, ac Superioris et Inferioris Silesiae, Wirtembergae, et Teckae, princeps Sueviae, comes Habsburgi, Tyrolis, Ferretis, Kyburgi, et Goritiae, landgravius Alsatie, marchio Sacri Romani Imperii Burgoviae, ac Superioris et Inferioris Lusatie, dominus Marchiae Sclavonicae, Portus Naonis, et Salinarum,

Notum, et testatum facimus omnibus et singulis, quorum interest, aut quomodolibet interesse potest: quod, cum defuncto ante triennium Serenissimo et Potentissimo Hispaniarum et Indiarum Rege Catholico Carolo Secundo pientissimae recordationis omnia illius regna, et provinciae intra et extra Europam sitae, quae haereditario jure ad nos nostramque inclytam domum pertinent, praeter omne jus et fas a Borbonia domo statim occupatae fuerint, ad eas autem vindicandas Serenissimus et Potentissimus quondam

³³ The text is taken from the original manuscript of the ratification by the Emperor, preserved in the London P. R. O., St. Pap. For., Treaties, no. 133.

Magnae Britanniae Rex Guilielmus Tertius gloriosae memoriae, et charissimi amici nostri Ordines Generales Foederatarum Belgii Provinciarum duobus abhinc annis foedus nobiscum inierint, post praedicti Regis Guilielmi e vivis excessum etiam Serenissima et Potentissima princeps Domina Anna Magnae Britanniae, Franciae, et Hiberniae regina consanguinea et soror nostra charissima uti in avitis regnis et dititionibus ita pariter in justissima hacce consiliorum et armorum societate successerit: ad illam quoque Serenissimus et Potentissimus princeps Dominus Petrus Secundus Lusitaniae et Algarbiae rex, frater et cognatus noster charissimus, invitatus pro insigni suo in salutem publicam et augustae domus nostrae incolumitatem studio et amore ea ratione accesserit, quam confectum nuperrime Olispone a cunctis plenipotentiariis instrumentum fusius exprimit tenore sequenti.

Cum Serenissimus ac Potentissimus princeps Leopoldus, Romanorum imperator, et Serenissimus ac Potentissimus princeps Guilielmus Tertius Magnae Britanniae quondam rex; nec non Celsi ac Praepotentes Domini Ordines Generales Foederatarum Belgii Provinciarum foedus inter se iniverint Hagae-Comitis conclusum die septimo Septembris anni millesimi septingentesimi primi, quod post obitum praedicti Regis Serenissima ac Potentissima princeps Anna Magnae Britanniae regina alacriter servandum suscepit, Serenissimum ac Potentissimum principem Petrum Secundum Portugalliae regem invitarunt, ut in ejus foederis societatem venire vellet, Ipsa autem Sacra Regia Majestas Portugalliae cum tam amica invitatione dominorum foederatorum permota, tum etiam reputans Christianissimum Regem Ludovicum Decimum Quartum, postquam ipse, neposque ejus ex Serenissimo Delphino secundo loco natus secum postrema percusserant foedera, multa edidisse non modo signa, sed etiam facta, quibus manifesto ostendit, ejus consilia eo solum tendere, ut oppressa Gallico dominatu Hispanorum libertate, Hispaniae regna et ditiones provinciarum in modum Galliae regno adjungat, quod non modo rei Lusitanae per incommodum accidisset ac periculi plenum, sed etiam coeteris Europae regnis ac nationibus, consultissimum ac rectissimum fore statuit, si ipse pro virili conaretur commune periculum avertere, Hispanosque finitimam gentem, Lusitanaeque cognatam et ad eosdem auctores origines referentem ab impotenti dominatione asserere, praesertim cum verendum esset, ne et praesens et postera aetas consilium improbaret regis ortu et origine Hispani (nam et Lusitani Hispanorum nomine censentur) si Hispaniam commune natale solum gravissimo ejus tempore deseruisset, et quasi imploranti opem, atque ab illis quos genuerat reposcenti amicam manum porrigere recusasset. Itaque cum nihil de jure successionis Hispanicae decum fuerit foederibus inter ipsam Sacram Regiam Majestatem Portugalliae Regemque Christianissimum atque ejus nepotem initis ut pote quae non praejudicata ea causa id unum respiciebant, ut praebita possidenti aliquali opera pax et tranquillitas Hispaniae, coeteraeque Europae juvaretur; visum fuit eidem Serenissimo ac Potentissimo principi Regi Portugalliae foedus inire cum eodem Serenissimo ac Potentissimo principe Leopoldo Romanorum Imperatore, ut cui successio Hispanica, mortuo sine liberis Catholico Rege Carolo hujus nominis secundo, gentilitio jure pactisque obveniret, atque una cum ejus foederatis et in eam causam conspirantibus, nempe cum Serenissima ac Potentissima principe Anna Magnae Britanniae regina, et Celsi ac Praepotentibus Dominis Ordinibus Generalibus Foederatarum Belgii Provinciarum, ut conjunctis animis et viribus communi securitati, Hispanorum libertati, legitimoque in regna succedendi juri quam firmissime consulatur; qua de causa ad id foedus ineundum plenipotencias suas et mandata dederunt ab una parte Sacra Cae-

sarea Majestas Domino Carolo Ernesto comiti a Waldstein, Aurei Velleris equiti, consiliario suo arcano, suoque et Serenissimi ac Potentissimi Romanorum et Hungariae Regis camerario, ac legato suo extraordinario in Lusitania; Serenissima ac Potentissima princeps Anna Magnae Britanniae regina Domino Paulo Methuen armigero et ablegato suo extraordinario in Lusitania; Celsi ac Praepotentes Domini Ordines Generales Foederatarum Belgii Provinciarum Domino Francisco Schonenberg; ab altera vero parte Serenissimus ac Potentissimus princeps Portugalliae Rex Domino Nonio de Mello Alvares Pereira consanguineo suo charissimo, duci de Cadaval, marchioni de Ferreira, comiti de Tentugal, domino oppidorum de Povoas de Sancta Christina, Villa Nova de Añcos, Noudar, Barrancos, Rabocal, Arega, Alvaia-sere, Buarcos, Anobra, Carapito, Mortagoa, Agoa de Peixes, Operal, Avermelia, Cercal, commendatario de Grandola in sodalitie equitum Jacobensium, in Avisiensium vero de Noudar et Barrancos, palatini Senatus Praesidi, hac in urbe regia totaque regione Extremadura equestrium ac pedestrium copiarum magistro, suae Sacrae Regiae Majestati immediato statusque consiliario; Domino Emmanueli Telles de Silva, marchioni de Alegrete, comiti Villarmajorio, in sodalitie equitum Christi commendatario Sancti Joannis de Alegrete et trapetorum de Soure, in Avisiensium vero collegio commendatario Sancti Joannis de Moura et Sanctae Mariae de Albufeira, triumviro fisci moderatori, primae admissionis cubiculario Sacrae Regiae Majestatis, suae ejusque status consiliario; Domino Francisco de Tavora, comiti de Alvor, domino oppidi de Moita, Pinelli praefecto, in Christi equitum sodalitie commendatario de Sancto Andrea de Rexeida, Porto Sancto, Sancta Maria duarum ecclesiarum, et Sancto Salvatore de Basto, praesidi Concilii transmarinis rebus praepositi, statusque consiliario; Domino Roquo Monte[iro] Paim, Domino de Alva, villa Cains et Refojos, in sodalitie Christi equitum commendatario Sanctae Mariae de Campanana et Sanctae Mariae de Gemunde, consiliario et secretario ejusdem Sacrae Regiae Majestatis; et Domino Josepho de Faria, publico totius regni tabulario praeposito, regni historiographo maximo, regiaeque signaturae secretario, et conciliario summe dictae Sacrae Regiae Majestatis; Qui quidem plenipotentarii virtute dictarum plenipotentiarum respective sibi concessarum (quae priusquam huic tractatui subscriberent, perpensae et excussae sunt, et pro legitimis ac sufficientibus habitis commutatae) re diligenter matureque deliberata Dominorum suorum altissime memoratorum nomine in capita sive articulos sequentes convenerunt et consenserunt.

1. Tres potentiae foederatae altememoratae una cum Sacra Regia Majestate Lusitana operam conferent unanimiter, ut Serenissimus Archidux Carolus filius secondogenitus Sacrae Caesariae Majestatis immittatur in possessionem totius Hispaniae, prout illam Rex Catholicus Carolus Secundus possidebat, cum eo tamen, ut Sacra Regia Majestas Lusitaniae non teneatur bellum facere offensivum praeterquam in ipsa Hispania.

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21. Neque pax, neque induciae fieri poterunt nisi mutuo consensu omnium foederatorum, neque ullo tempore fient manente in Hispania secundogenito Regis Christianissimi ex Delfino nepote, quolibetve alio principe ex stirpe Gallica, et quin Lusitana corona integre possideat et dominetur omnibus terris, regnis, insulis, statibus, ditionibus, arcibus, urbilibus, oppidis, pagis, eorumque territoriis et annexis, quae nunc tam in Hispania quam extra ipsam habet.

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23. Serenissimus Archidux Carolus, postquam Hispaniae dominabitur, Sacrae Regiae Majestati Lusitaniae Indicaeque Societati solvet quidquid corona Hispaniae ipsis solvere tenebatur ex vi transactionis cum ipsa initae, perinde ac si cum eo re ipsa inita fuisset, translatis in ipsum omnibus obligationibus et conditionibus ejus, ut eas exacte observet, curetque ut solutiones fiant eisdem temporibus in ea expressis, nempe prima solutio in adventu primae classis Indicae aut classiculae, quae in Hispaniam appulerit, postquam in ipsa dominabitur praedictus Serenissimus Archidux; secunda vero in adventu secundae, coeterisque rebus satisfaciatur, quae in praedicta transactione continentur, ita ut corona Lusitana Indicaque Societas omnia consequatur, quae vi praedictae transactionis consequi debebat; Sacra autem Regia Majestas Magnae Britanniae et Celsi ac Praepotentes Domini Ordines Generales Foederati Belgii sese obligant tanquam garantes Serenissimum Archiducem contentis in hoc articulo satisfacturum.

29. Tractatus hic confirmabitur, et ratihabebitur legitima ac debita forma per alte memoratos dominos ipsorum plenipotentiariorum; ipsaeque ratificationes cummutabuntur Olisipone intra trium mensium spatium a subscriptione ejus.

In quorum omnium fidem ac testimonium nos supra memorati plenipotentarii, Sacrae Caesareae Majestatis, et Sacrae Regiae Majestatis Magnae Britanniae, nec non Celsorum ac Praepotentium Dominorum Ordinum Generalium Foederati Belgii hoc instrumentum manibus nostris subscripsimus, appositisque insignium nostrorum sigillis munivimus; ipsi vero domini plenipotentarii Sacrae Regiae Majestatis Lusitaniae, vitandae controversiae causa, quae est de loci praerogativa inter coronas Britannicam et Lusitanam pro more consuetudineque inter utramque coronam observata, separatim alia ejusdem tenoris instrumenta subscripserunt et sigillis apposis munierunt. Olisipone die decimo sexto Maii, anni Domini millesimi septingentesimi tertii.

C. E. C. DE WALDSTEIN

P. METHUEN

F. SCHONENBERG

Nos foedus istud per omnia et singula approbaverimus, confirmaverimus, et ratum habuerimus, approbamus etiam illud confirmamus, et ratum habemus vigore harum literarum, promittentes verbo nostro imperiali, regio, et archiducali, Nos omnia et singula in praefacto foedere contenta firmiter et constanter observaturos, impleturos, observari et impleri curaturos, neque quantum in nobis erit passuros ut a quopiam sub quocunque demum praetextu directe vel indirecte violentur et infringantur; In cujus rei fidem hasce manu nostra subscriptas sigilli nostri Caesaris appensione muniri jussimus. Dabantur in civitate nostra Viennae die tertia mensis Julii anno Domini millesimo septingentesimo tertio, regnorum nostrorum Romani quadragesimo sexto, Hungarici quadragesimo nono, Bohemici vero quadragesimo septimo.

LEOPOLDUS.

V[id]it D. A. C. Á KAUNITZ.

Ad mandatum Sacrae Caesareae
Majestatis proprium.

C. F. CONSBRUCH.

Nos Leopoldus divina favente clementia electus Romanorum imperator semper augustus, ac Germaniae, Hungariae, Bohemiae, Dalmatiae, Croatiae,

Slavoniae rex, archidux Austriae, dux Burgundiae, Brabantiae, Styriae, Carinthiae, Carniolae, marchio Moraviae, dux Luxemburgiae ac Superioris et Inferioris Silesiae, Wirtembergae et Teckae, princeps Sueviae, comes Habsburgi, Tyrolis, Ferretis, Kyburgi et Goritiae, landgravius Alsatie, marchio Sacri Romani Imperii Burgoviae ac Superioris et Inferioris Lusatiae, dominus Marchiae Slavonicae, Portus Naonis et Salinarum,

Notum testatumque facimus omnibus et singulis, quorum interest, aut quomodolibet interesse potest: Quod, cum nos inter et Serenissimam Potentissimamque principem ac dominam Annam Magnae Britanniae, Franciae et Hiberniae reginam, uti et Ordines Generales Foederati Belgii ex una, et Serenissimum ac Potentissimum dominum Petrum Secundum Lusitaniae et Algarbiae regem ex altera parte per deputatos ad id et sufficienti mandato instructos ministros die decima sexta Maii nuperi Olisipone foedus initum et conclusum sit, omnibus vero partibus placuerit de sequentibus adhuc duobus articulis separatis convenire.

Consultum visum est, ut secreti essent duo articuli inferius scripti ad foedus offensivum spectantes hoc ipso die subscriptum et obsignatum, ab una parte per dominos plenipotentiariorum Sacrae Caesariae Majestatis et Sacrae Regiae Majestatis Magnae Britanniae nec non Celsorum ac Praepotentium dominorum Ordinum Generalium Foederati Belgii, ab altera vero parte per dominos plenipotentiariorum Sacrae Regiae Majestatis Portugaliae, cum eo tamen ut non minorem firmitatem habeant, sed eodem vigore et validitate gaudeant tanquam pars integrans et substantialis ejusdem foederis offensivi.

I. Cautum est ut Serenissimus Archidux Carolus postquam in ipsum cessum et translatum legitime fuerit jus quo sit Rex Hispaniae et Indiarum Occidentalium, prout ambo haec Catholicus Rex Carolus Secundus possidebat, cedat donetque Sacrae Regiae Majestati Lusitaniae oppida Pacem Augustam, sive Badajos, Albuquerque, Valentiam, et Alcantaram, in regione Extremadura, et oppida Guardan, Tuy, Bajonam, et Vigum in regno Galiciae, eaque omnia oppida urbes et castella cum agro singulis attributo, prout ad singula eorum spectat, eodemque modo quo in praesenti habetur. Quae quidem cessio et donatio fiet coronae Portugalliae in perpetuum, ut ea omnia oppida, urbes, et castella, sicut praefertur, eodem jure, proprietate, et supremo dominio habeat, quo illa omnia praedictus Rex Catholicus Carolus Secundus possidebat.

In quorum omnium fidem ac testimonium nos supra memorati plenipotentiarii Sacrae Caesariae Majestatis et Sacrae Regiae Majestatis Magnae Britanniae necnon Celsorum ac Praepotentium dominorum Ordinum Generalium Foederati Belgii hoc instrumentum manibus nostris subscripsimus, appositisque insignium nostrorum sigillis munivimus; ipsi vero domini plenipotentiarii Sacrae Regiae Majestatis Lusitaniae vitandae controversiae causa, quae est de loci praerogativa inter coronas Britannicam et Lusitanam pro more consuetudineque inter utramque coronam observata, separatim alia ejusdem tenoris instrumenta subscripserunt, et sigillis apposisit munierunt. Olisipone die decimo sexto Maii anni Domini millesimi septingentesimi tertii.

C. E. C. DE WALDSTEIN. P. METHUEN
F. SCHONENBERG.

Nos eosdem articulos separatos per omnia et singula approbaverimus, confirmaverimus, et ratos habuerimus, approbamus etiam illos, confirmamus, et ratos habemus, promittentes verbo nostro imperiali regio et archiducali eos

eandem plane vim, robur et vigorem habituros, atque a nobis perinde observatum et impletum iri, ac si memorato foederi ab initio inserti fuissent; In cujus rei fidem hasce manu nostra subscriptas sigilli nostri Caesaris appensione muniri jussimus. Dabantur in civitate nostra Viennae die tertia mensis Julii anno Domini millesimo septingentesimo tertio, regnorum nostrorum Romani quadragesimo quinto, Hungarici quadragesimo nono, Bohemici vero quadragesimo septimo.

LEOPOLDUS.

V[id]it D. A. C. Á KAUNITZ.

Ad mandatum Sacrae Caesaris
Majestatis proprium.

C. F. CONSBRUCH.

TRANSLATION.

We, Leopold, by the favor of divine clemency elected Ever August Emperor of the Romans and king of Germany, Hungary, Bohemia, Dalmatia, Croatia, Slavonia, archduke of Austria, duke of Burgundy, Brabant, Styria, Carinthia, Carniola, margrave of Moravia, duke of Luxemburg and of Upper and Lower Silesia, Württemberg, and Teck, prince of Suabia, count of Hapsburg, Tirol, Ferrara, Kyburg, and Görz, landgrave of Alsace, margrave, in the Holy Roman Empire, of Burgau and Upper and Lower Lausitz, lord of the Slavonic March, Pordenone, and Salzburg,

Make known and testify to all and singular whom it concerns or in any way may concern, that whereas after the death, three years ago, of the Most Serene and Most Potent Catholic King of Spain and the Indies, Charles II. of most blessed memory, all of his kingdoms and provinces, within and without Europe, which by hereditary right pertain to us and our illustrious house, were immediately taken possession of by the house of Bourbon, contrary to all law, human and divine, for the purpose of vindicating these, the Most Serene and Most Potent late King of Great Britain, William III. of glorious memory, and our dearest friends the States General of the United Provinces of the Netherlands, entered two years ago into a league with us, after the departure from this life of the abovementioned King William the Most Serene and Most Potent princess Anne, queen of Great Britain, France, and Ireland, our most dear cousin and sister, has taken his place, as in her ancestral kingdoms and dominions, so also in this most just union of counsels and arms. To this also the Most Serene and Most Potent prince Pedro II., king of Portugal and Algarve, our most dear brother and kinsman, having been invited on account of his marked desire and regard for the public safety and security of our august house, acceded for the reason, which the instrument recently concluded at Lisbon by all the plenipotentiaries more fully expresses, as follows:

Whereas the Most Serene and Most Potent prince Leopold, emperor of the Romans, and the Most Serene and Most Potent prince William III., late king of Great Britain, and also the High and Mighty lords, the States General of the United Provinces of the Netherlands, entered into a mutual league concluded at the Hague on September 7, 1701, which, after the death of the aforesaid king, the Most Serene and Most Potent princess Anne, queen of Great Britain, very cordially undertook to observe; and whereas they invited the Most Serene and Most Potent prince Pedro II., king of

Portugal, to be pleased to enter into this alliance; and whereas his Sacred Royal Majesty of Portugal, not only induced by so friendly an invitation of the allied lords, but also considering that the Most Christian King Louis XIV., after concluding, together with his grandson, the second son of the Most Serene Dauphin, the last alliances with the King of Portugal, had made it evident not only by many tokens but also by deeds that his designs were directed solely at suppressing by French domination the liberty of the Spaniards, and at annexing the kingdoms and dominions of Spain as so many provinces to his kingdom of France—a thing very prejudicial and dangerous to the interests not only of Portugal but also of the other kingdoms and nations of Europe, has deemed it most advisable and fitting to endeavor to the utmost of his ability to avert the common danger, and to liberate from the yoke of tyranny both the Spaniards and also their next neighbors and kinsmen the Portuguese, originally derived from the same ancestors, especially since it is to be feared lest both the present and the future age would blame the resolution of a king, a Spaniard by birth and origin (for the Portuguese also are included under the name of Spaniards) if he should forsake Spain, his native country, at the time of her greatest need, and refuse to extend a friendly hand to one imploring and claiming aid from those whom she had brought forth:—Therefore, since nothing concerning the right of succession to the crown of Spain has been decided by the treaties concluded between his Sacred Royal Majesty of Portugal and the Most Christian King and his grandson—these treaties, without prejudging that cause, having only in view the promotion by any means of the peace and quiet of Spain and of the rest of Europe—it has seemed best to the said Most Serene and Most Potent prince the King of Portugal to enter into a treaty with the said Most Serene and Most Potent prince Leopold, emperor of the Romans, to whom, by the death of the Catholic King Charles the Second without issue the Spanish succession falls by right of birth and by treaties, and with his allies united in the same cause, namely, with the Most Serene and Most Potent princess Anne, queen of Great Britain, and the High and Mighty lords the States General of the United Provinces of the Netherlands; so that with their united counsels and forces the strongest provision may be made for the common security, the liberty of the Spaniards, and the lawful right of succession to the kingdoms of Spain. Therefore, for the purpose of concluding this treaty of alliance, his Sacred Imperial Majesty, on the one part, has given his full powers and commission to Karl Ernst, Count Waldstein, knight of the Golden Fleece, his privy councillor and his chamberlain, as Emperor and as Most Serene and Most Potent King of the Romans and of Hungary, and his ambassador extraordinary in Portugal; the Most Serene and Most Potent princess Anne, Queen of Great Britain [has given them] to Paul Methuen, esquire, her envoy extraordinary in Portugal; and the High and Mighty lords, the States General of the United Provinces of the Netherlands [have given them] to Francis Schonenberg; and, on the other part, the Most Serene and Most Potent prince, the King of Portugal [has given them] to Dom Nuno de Mello Alvares Pereira, his very dear kinsman, duke of Cadaval, marquis of Ferreira, count of Tentugal, lord of the towns of Povoá de Santa Christina, Villa Nova de Anços, Noudar, Barrancos, Rabaçal, Arega, Alwayazere, Buarcos, Anobra, Carapito, Martagoa, Agua de Peixes, Operal, Avermelha, Cercal, knight-commander of Grandola in the Order of St. James, and of Noudar and Barrancos in the Order of Aviz, president of the Dezembargo de Paço, general of horse and foot in this royal city and in the whole province of Estremadura, privy councillor of his Sacred Royal Majesty, and coun-

cillor of state; to Dom Manoel Telles da Silva, marquis of Alegrete, count of Villarmayor, knight-commander of São João of Alegrete and of the Lagares (oil presses) de Soure in the Order of Christ, and in the Order of Aviz knight-commander of São João of Moura and of Santa Maria of Albufeira, comptroller of the treasury, gentleman of the bedchamber of his Sacred Royal Majesty, and his councillor of state, etc.; to Dom Francisco de Tavora, count of Alvor, lord of the town of Mouta, governor of Pinhel, knight-commander of Santo André de Freixeda, Porto Santo, Santa Maria das Duas Igrejas and São Salvador de Basto in the Order of Christ, president of the Council for the Colonies and councillor of state, etc.; to Dom Roque Monteiro Paym, lord of Alva, Villa Caiz, and Refoyos, knight-commander of Santa Maria de Campanham, and of Santa Maria de Gemonde in the Order of Christ, councillor and secretary of his said Sacred Royal Majesty; and to Dom José de Faria, chief archivist and chief historiographer of the kingdom, and secretary of the royal signature, and councillor of the aforesaid Sacred Royal Majesty—these plenipotentiaries—by virtue of the aforesaid full powers respectively granted to them, which, having been first carefully examined and found to be legal and sufficient, were exchanged before they signed this treaty—having deliberated on the matter diligently and ripely, in the name of their aforesaid lords agreed and consented to the following heads, or articles.

1. The three allied powers above-mentioned, together with his Sacred Royal Majesty of Portugal, shall unanimously endeavor to put the Most Serene Archduke Charles, second son of his Sacred Imperial Majesty, in possession of all Spain, just as the Catholic King Charles II. possessed it, but with this declaration—that his Sacred Royal Majesty of Portugal shall not be obliged to carry on an offensive war except in Spain itself.

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21. No peace or truce shall be made without the joint consent of all the allies, nor shall they be made at any time while the grandson of the Most Christian King, the second son of the Dauphin, or any other prince of the house of France, remains in Spain; nor unless the crown of Portugal remain in the entire possession or dominion of all the lands, kingdoms, islands, estates, lordships, castles, cities, towns, villages and their territories and appurtenances that it has now in Spain and outside it.

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23. After the Most Serene Archduke Charles becomes King of Spain, he shall pay to his Sacred Royal Majesty of Portugal, and to the Indian Company, all that the crown of Spain was obliged to pay them, by virtue of a convention (*transacção*) made with that crown, in the same manner as if the said convention had been made with the Archduke, all the obligations and conditions of the convention being transferred to his person, that he may observe them punctually, commanding that the payments be made at the times therein declared, namely, the first payment at the arrival of the first Indian fleet, or squadron, which shall come to Spain after the aforesaid Most Serene Archduke shall become king there; and the second payment at the arrival of the second fleet; and he shall perform the other things contained in the said convention, so that the crown of Portugal and the Indian Company shall obtain everything that by virtue of the aforesaid convention they ought to obtain. Her Sacred Royal Majesty of Great Britain, moreover, and the High and Mighty lords the States General of the United Netherlands make themselves guarantors for the Most Serene Archduke's performance of this article.

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29. This treaty shall be confirmed and ratified in lawful and due form by the above-mentioned lords of the said plenipotentiaries; and the ratifications shall be exchanged at Lisbon within the space of three months from the time of signing it.

In pledge and testimony of all the above, we the above-mentioned plenipotentiaries of his Sacred Imperial Majesty and his Sacred Royal Majesty of Great Britain, as well as of the High and Mighty lords the States General of the United Netherlands have subscribed this instrument with our hands, and sealed it with the seals of our arms; but the plenipotentiaries of his Sacred Royal Majesty of Portugal, for the sake of avoiding the dispute between the crowns of Britain and Portugal concerning precedence, have in accordance with the manner and custom observed between the two crowns, signed and sealed separately other instruments of the same tenor.

Lisbon, May 16, 1703.

C. E. C. DE WALDSTEIN.

P. METHUEN.

F. SCHONENBERG.

This alliance we have approved, confirmed, and ratified in all and singular, and we do approve, confirm, and ratify it, by virtue of these letters, promising by our imperial, royal, and archducal word that we will observe and fulfill, firmly and consistently, all and singular the contents of the concluded treaty, and will cause them to be observed and fulfilled, nor, so far as in us lies, will we suffer it to be violated or infringed by anyone under any pretext, directly or indirectly. In faith whereof we have ordered these letters, signed by our hand, to be sealed with our imperial seal. Given in our city of Vienna, July 3, in the year of the Lord 1703, in the forty-sixth year of our reign over the Roman kingdom, in the forty-ninth over the Hungarian, and in the forty-seventh over the Bohemian.

LEOPOLD.

Vidit D. A. C. A KAUNITZ.

On His Sacred Imperial
Majesty's own command.

C. F. CONSRUCK.

We, Leopold, by favor of divine clemency elected Emperor of the Romans, Ever August, and King of Germany, Hungary, Bohemia, Dalmatia, Croatia, Slavonia, archduke of Austria, duke of Burgundy, Brabant, Styria, Carinthia, Carniola, margrave of Moravia, duke of Luxemburg, and of Upper and Lower Silesia, Württemberg and Teck, prince of Suabia, count of Hapsburg, Tirol, Ferrata, Kyburg, and Görz, landgrave of Alsace, margrave in the Holy Roman Empire of Burgau and Upper and Lower Lusatia, lord of the Slavonic March, Pordenone, and Salzburg,

Make known and declare to all and singular whom it concerns or in any way may concern, that whereas between us and the Most Serene and Most Potent princess Anne, queen of Great Britain, France and Ireland, as well as the States General of the United Netherlands, on the one part, and the Most Serene and Most Potent Pedro II., king of Portugal and Algarve, on the other, a treaty was entered into and concluded at Lisbon on May 16, last past, by ministers deputed for that purpose, and furnished with sufficient powers, and all parties approved of agreeing to the two following separate articles.

It has been agreed that the two secret articles, written below, should be added to the offensive alliance signed and sealed on this same day by the

plenipotentiaries of his Sacred Imperial Majesty, of her Sacred Royal Majesty of Great Britain, and of the High and Mighty lords the States General of the United Netherlands on the one part, and by the plenipotentiaries of his Sacred Royal Majesty of Portugal on the other hand; but with this proviso, that they shall be no less firm, but shall have the same validity as the entire and substantial part of the said offensive alliance.

I. It is provided that the Most Serene Archduke Charles after the right has been legally ceded and transferred to him to be King of Spain and of the West Indies, as the Catholic King Charles II. possessed them both, shall cede and give to his Sacred Royal Majesty of Portugal the towns of Badajoz, Albuquerque, Valencia, and Alcántara in Estremadura, and the towns of Guarda, Tuy, Bayona, and Vigo, in the kingdom of Galicia, and all those towns, cities, and castles with the territory thereof, as it pertains to each of them respectively, and in the same manner that it is at present held. This cession and donation shall be made to the crown of Portugal in perpetuity, so that it shall hold all these towns, cities, and castles, as aforesaid, by the same title, right of possession and sovereignty by which the aforesaid Catholic King Charles II. possessed them.

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In pledge and testimony of all the above, we the above-mentioned plenipotentiaries of his Sacred Imperial Majesty and her Sacred Royal Majesty of Great Britain, as well as of the High and Mighty lords the States General of the United Netherlands, have subscribed this instrument with our hands, and sealed it with the seals of our arms; but the plenipotentiaries of his Sacred Royal Majesty of Portugal, for the sake of avoiding the dispute between the crowns of Britain and Portugal concerning precedence, have, in accordance with the manner and custom observed between the two crowns, signed and sealed separately other instruments of the same tenor. Lisbon, May 16, 1703.

C. E. C. DE WALDSTEIN.
P. METHUEN.
F. SCHONENBERG.

We have approved, confirmed, and ratified the said separate articles in all and singular. and do approve, confirm, and ratify them, promising on our imperial, royal, and archducal word, that they shall have the same full force and strength and shall be observed and fulfilled by us as if they had been inserted in the aforesaid treaty from the beginning. In faith whereof we have ordered these letters to be signed by our hand and sealed with our Imperial seal. Given in our city of Vienna, July 3, in the year of the Lord, 1703, and of our reign over the Roman kingdom the forty-fifth, over the Hungarian the forty-ninth, and over the Bohemian the forty-seventh.

LEOPOLD.

Vidit D. A. C. A KAUNITZ.

On His Sacred Imperial
Majesty's own command.
C. F. CONSRUCH.

Articles of peace and commerce between Great Britain and Algiers, ratified, confirmed, and renewed by Rear Admiral George Byng, October 28/November 8, 1703.

INTRODUCTION.

In May, 1703, a year after the declaration of war against France by the English, Dutch, and Imperial governments, Sir Cloudesley Shovell, admiral and commander in chief of England's Mediterranean squadron, was instructed to renew treaties with the rulers of the Barbary States, deliver presents to them, and persuade them also to declare war against France. The admiral was empowered either to negotiate in person or to appoint someone else for the task.¹ He delegated it to Rear Admiral Byng, who in the month of October was dispatched to Algiers with a squadron of five ships and presents apparently to the value of £300.² Despite the gifts Byng was not able to cause the Dey to break with France, but on November 8 he succeeded in concluding with the government of Algiers three articles, printed in part below.³ Besides confirming earlier peace treaties, the articles provided that henceforth Englishmen should pay five instead of ten per cent. customs for goods sold to them at Algiers (art. 2), and that all prizes taken by Queen Anne's subjects and all vessels built and fitted out in her American plantations, and not having been in England, should not be molested even if they had no pass, but that certificates signed, in the case of colonial ships, by "the chief of any of Her Majesty's plantations in America or where any ships shall be built or fitted", should be a sufficient pass.

The matter of passes for colonial ships had received considerable attention from the Privy Council, the Board of Trade and Plantations, and the Admiralty. The Anglo-Algerine treaty of April 23/May 3, 1662, had provided that an Algerine man-of-war meeting any British merchant ship (*vaisseaux marchands appartenants à sadite Majesté Britannique*), not in British seas, should let it go unmolested if the master produced an Admiralty pass, or if the majority of the crew were British subjects.⁴ The treaty of 1682

¹ MSS. of the House of Lords, 1702-1704, pp. 511, 517 ff.

² *Calendar of Treasury Papers*, 1702-1707, p. 114, no. 90; *Cal. St. Pap. Dom.*, 1702, p. 598.

³ J. Charnock, *Biographia Navalis* (1794-1798), p. 197; E. Plantet, *Correspondance des Dey's d'Alger avec la Cour de France*, p. 19, note 3.

⁴ Dumont, *Corps Diplomatique*, tom. VI., pt. II., p. 420.

required the production of an Admiralty pass,⁵ and the treaty of 1686, an Admiralty pass or one under the hand and seal of the king.⁶

A royal proclamation of 1683 commanded the magistrates and customs officers in all ports of his Majesty's dominions to give notice that his Majesty's subjects might have ships' passes from the Admiralty;⁷ and in 1692, after certain ships had been seized for lack of them, all customs officers were ordered to warn ships to obtain this pass.⁸ In 1698, some doubt having arisen with regard to the granting of Mediterranean passes to ships built in the plantations, the King in Council ordered "that for the future all ships belonging to His Majestys subjects, that are on trading voyages to, or remaining in any port of His Majestys plantations, may have passes granted them in like manner as if they were in a forain port".⁹ Yet it appears that the colonies had not been duly provided with passes and that the consequent lack of protection for their ships not only involved them in loss but was also likely to disturb relations between Great Britain and Algiers.¹⁰ Hence in 1699 the Dey proposed that all ships of the King of Great Britain's subjects should trade without passes for eighteen months, and that within that time effectual means should be found for supplying therewith the ships belonging to the English plantations—both those trading from one English plantation to another, and from any of them to other parts where they might be

⁵ The fourth article of the treaty of 1682 is as follows:

"That the Alger ships of war, or other vessels, meeting with any merchants' ships, or other vessels, of his said Majesty's subjects, not being in any of the seas appertaining to his Majesty's dominions, may send on board one single boat, with two sitters only, besides the ordinary crew of rowers, and that no more shall enter any such merchant ship or vessel, without express leave from the commander thereof, but the two sitters alone; and that upon producing a pass under the hand and seal of the Lord High Admiral of England and Ireland, or of the Lord High Admiral of Scotland, for the said kingdoms respectively, or under the hands and seals of the commissioners for executing the office of Lord High Admiral of any of the said kingdoms, that the said boat shall presently depart, and the merchant ship or vessel shall proceed freely on her voyage, and that although, for the space of fifteen months next ensuing after the conclusion of this peace, the said commander of the merchant ship or vessel produce no such pass, yet if the major part of the seamen of the said ship or vessel be subjects of the said King of Great Britain, the said boat shall immediately depart, and the said merchant ship, or vessel, shall freely proceed on her voyage; but that after the said fifteen months, all merchants' ships, or vessels, of his said Majesty's subjects, shall be obliged to produce such a pass as aforesaid. And any of the ships of war, or other vessels, of his said Majesty, meeting with any ships or other vessels, of Algiers, if the commander of any such Alger ship, or vessel, shall produce a pass firmed by the chief governors of Algiers, and a certificate from the English consul living there, or if they have no such pass, or certificate, yet if, for the space of fifteen months next ensuing the conclusion of this peace, the major part of the ship's company be Turks, Moors, or slaves belonging to Algiers, then the said Alger ship, or vessel, shall proceed freely; but that, after the said fifteen months, all Alger ships, or vessels, shall be obliged to produce such a pass and certificate as aforesaid." The text of the treaty is in L. Hertslet, *Complete Collection of Treaties*, I. 59 ff.; *British and Foreign State Papers*, vol. I., pt. I., pp. 354 ff.

⁶ Art. 4. The text of the treaty of 1686 is in Hertslet, *op. cit.*, I. 66 ff.; *Brit. and For. St. Pap.*, vol. I., pt. I., pp. 360 ff.

⁷ Earl of Crawford, *Biblioteca Lindesiana: Bibliography of Royal Proclamations, 1485-1714*, p. 454, no. 3740.

⁸ *Ibid.*, p. 489, no. 4079.

⁹ *Acts of the Privy Council, Colonial*, II. 318, no. 696.

¹⁰ *Cal. St. Pap. Col.*, 1699, p. 196, no. 351, p. 201, no. 361, p. 562, no. 1022.

met with by ships of Algiers.¹¹ The British government promptly began to arrange for dispatching the required passes¹² to the colonies, and meanwhile succeeded in coming to an agreement with the government of Algiers, on August 17, 1700, for an extension of the period of exemption till the last of September, 1701.¹³ According to the second article of this agreement goods on English ships seized after that time and not having a pass should be prize, but the master, men, and ship should be restored. Copies of this agreement were sent to the colonial governors in America in December, 1700, after the passes had been furnished them.¹⁴

On August 10, 1701, yet another article was signed at Algiers, annulling the second article of the agreement of August 17, 1700, declaring the validity of the fourth article of the treaty of 1682, and extending the time of exemption until the last day of March, 1702.¹⁵

In view of the difficulties involved in keeping the colonial officials supplied with sufficient Admiralty passes, the provision of Byng's treaty of 1703 that a certificate of the chief of any of the colonies would be a sufficient pass must have been of real advantage to colonial trade.

¹¹ *Ibid.*, p. 562, no. 1022; *id.*, 1700, pp. 2, 3, no. 4.

¹² *Id.*, 1699, p. 575, no. 1068; *id.*, 1700, p. 289, no. 480, p. 296, no. 493, pp. 297-299, no. 497, p. 355, no. 577; *Acts P. C. Col.*, II, 318, no. 696; Crawford, *op. cit.*, p. 510, no. 4280.

¹³ *Cal. St. Pap. Col.*, 1700, pp. 664, 665, no. 948. The second of the articles of the agreement of 1700 is as follows: "That whereas we had declared, that all ships and vessels belonging to the said King of Great Britain should have passes by the last of September, 1700, we do by these declare, at the desire of Captain John Munden, commander-in-chief of his Majesty's ships in the Mediterranean, and Robert Cole, Esq. his Majesty's consul, now residing at our city of Algier, on the behalf of their great master, that no passes shall be required or expected from any of the English ships or vessels in any part of the world; but that they shall proceed on their voyage, without producing or showing a pass to any of our cruizers till the last of September, 1701; and after that time is expired and any ship of England be seized, not having a pass, we do hereby declare, that the goods on that ship shall be prize; but the master, men, and ship, shall be restored, and the freight immediately paid to the said master, to the utmost value as if he should have gone safe to the port whither he was bound." The four articles are in Hertslet, *op. cit.*, I, 72, 73; *Br. and For. St. Pap.*, vol. I, pt. I, pp. 365, 366.

¹⁴ *Cal. St. Pap. Col.*, 1700, pp. 709, 710, no. 965.

¹⁵ The text of the article is as follows: "Whereas on the 17th day of August, 1700, it was agreed between Mr. Robert Cole, his Majesty's agent and consul-general in this city and kingdom, and Commodore Munden, on one part, and the most excellent lord Mustapha Effendi Dey, on the other part; that whatsoever ships or other vessel should be brought into this port or kingdom, after the last day of September, 1701, without passes, the goods on board said ships or vessels should be confiscated, but the ships and men set at liberty, and the freight paid, which being represented to his Majesty by his trading subjects to be of dangerous consequence to their estates, it is now therefore positively agreed, that the said article of the 17th of August, 1700, be made null, void and of no effect; but that the IVth article made by Admiral Herbert, in the year 1682, stand firm and valid; and since several of His Majesty's subjects are in divers remote parts of the world, on long voyages, and cannot, for that reason, be supplied with the necessary passes, in the form and manner agreed in the aforesaid IVth article, therefore it is concluded by this present writing, that the subjects of the King of Great Britain have till the last day of March, anno 1702, for their being furnished with such instruments as in the IVth article it is agreed; to the truth of which we have hereunto set our hands and seals in Algiers, the 10th day of August, anno 1701, which is the Turkish account 1113, in the moon Rebea Awell." *Br. and For. St. Pap.*, vol. I, pt. I, pp. 366-367.

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Text: MS. An original manuscript of the treaty is preserved in the P. R. O., St. Pap. For., Treaties, no. 18.

Text: Printed. L. Hertslet *et al.*, *A Complete Collection of the Treaties as far as they relate to Commerce and Navigation* (1827-1845), I. 74-75; *British and Foreign State Papers* (1841-), vol. I., pt. I., pp. 367-368; John Morgan, *A Complete History of Algiers* ([1728]-1731), at end.

References: Contemporary and early writings. *Manuscripts of the House of Lords, 1702-1704* (House of Lords Manuscripts, vol. V., n. s., 1910), pp. 510, 511, 517-520; *Cal. St. Pap. Col.*, 1699, pp. 196, 201, 202, 562, 563, 567, 570, 572, 575, 576; *id.*, 1700, pp. 2, 3, 289-303, *passim*, 355, 664, 665, 709, 710; *id.*, 1701, p. 423; *id.*, 1702-1703, p. 552; *Acts of the Privy Council, Colonial*, II. 318, 682; *Cal. St. Pap. Dom.*, 1702-1703, pp. 162, 497, 598, 674, 705-708, 713; *Calendar of Treasury Papers, 1702-1704*, pp. 114, 129, 149, 250, 287; E. Plantet, *Correspondance des Deys d'Alger avec la Cour de France* (1889), II. 17, note 2, 19, note 3.

References: Later writings. R. L. Playfair, *The Scourge of Christendom* (1884), pp. 169, 170; H. L. Osgood, *The American Colonies in the Eighteenth Century* (1924-1925), I. 550-552; L. Galibert, *L'Algérie* (1844), pp. 235, 236.

TEXT.¹⁶

Articles of peace and commerce, between the Most Serene and Mighty Princess Ann, by the grace of God, queen of Great Brittain, France, and Ireland, defender of the Christian faith, etca., and the Most Illustrious lord Mustapha Dey, the bashaw, aga, and governour of the famous city and kingdom of Algiers in Barbary, ratified, confirmed, and renewed by George Byng Esqr., rear admirall of the Red Squadron of her Majesties fleet, on the 28th day of October, old stile, 1703.

I. In the first place it is agreed and concluded that from this day, and for ever forwards, that the peace made by Arthur Herbert, Esqr. then admirall of her Majesties fleet, in the Mediterranean, in the year 1682,¹⁷ and since confirm'd by Sir William Soames, baronett, embassadore to the Grand Signior, in the year 1686,¹⁸ with the additional articles agreed to with Captain Munden and Consul Cole, in the year 1700,¹⁹ be renew'd and confirm'd, (with the further addition of the articles agreed to in this treatie with George Byng, Esqr. rear admirall of the Red Squadron of Her Majesties fleet) be kept inviolable between the Most Serene Queen of Great Brittain, France, and Ireland, defender of the Christian faith, etca. and the Most Illustrious lord Mustapha Dey, the bashaw, aga, and governour of the famous city and kingdom of Algiers, and between all the dominions and subjects of either side, and that the ships and other vessells, and the subjects and people of both sides, shall not henceforth doe to each other any harme, offence, or injury, either in word or deed, but shall treat one another with all possible respect and

¹⁶ The text is taken from the original manuscript of the treaty, preserved in the P. R. O., St. Pap. For., Treaties, no. 18.

¹⁷ See above, note 4.

¹⁸ See above, note 5.

¹⁹ See above, note 12.

friendship; and that all demands and pretences whatsoever to this day, between both parties, shall cease and be void.

3. And it is further agreed and declared, that all prizes taken by any of Her Majesties of Great Brittain's subjects, and all ships and vessells built and fitted out in any of Her Majesties plantations in America that have not been in England, shall not be molested in case of noe pass; but that a certificate in writing under the hand of the commanding officers that shall soe take prizes, or cheif of any of Her Majesties plantations in America, or where any ships shall be built or fitted, shall be a sufficient pass to either of them; and our faith shall be our faith, and our word, our word.

G. BYNG.

Confirm'd and sealed in the presence of Almighty God, the twentie eighth day of October, in the year of our Lord Jesus Christ one thousand seven hundred and three, and in the year of the Hegira, one thousand one hundred and fiveteene, and the first day of the moon Regep.²⁰

G. BYNG.

²⁰ The seventh month of the Mohammedan year.

Treaty of Union between England and Scotland, concluded at Westminster, July 22, 1706, O. S. Ratified by act of the Scottish Parliament, January 16, 1707. [Ratified by act of the English Parliament, March 6, 1707.]

INTRODUCTION.

During a period of more than forty years following the restoration of the Stuarts to the English throne in 1660 relations between England and Scotland tended to become more and more strained. Scotsmen found the Union of the Crowns, existent since 1603, in many ways disadvantageous. It involved them in England's wars with their excellent customers, the Dutch and the French, and yet did not prevent the English Parliament from virtually declaring them aliens¹ and their country foreign, and from imposing high duties on imports from Scotland, and otherwise restraining the flow of goods between the two countries.² By the Acts of Navigation and Trade of 1660 and 1663 Scotsmen and their shipping were prohibited from sharing in England's colonial and coastal trade, and in part at least from her foreign commerce.³ An act of the year 1696 virtually prohibited persons "claiming any right or propriety in any islands or tracts of land upon the continent of America, by charter or letters patents", from selling the same to Scotsmen without an Order in Council.⁴ The same act disqualified the Scotsmen in the colonies from serving as jurors in actions concerning the customs revenue,⁵ and from holding "places of trust in the courts of law, or what relates to the treasury".⁶ These posts were to be reserved for natives of England or Ireland or of the plantations; but the opinion of the attorney general and solicitor general that Scotsmen were natural-born subjects of England within the construction of that act led in 1700 to the reinstatement of some that had been removed.⁷ The opposition of the English government to

¹ 13 and 14 Car. II. c. 11, sec. vi. "Any of His Majesty's subjects of England, Ireland, and his Plantations are to be accounted English, and no others." Opposed to this statutory provision was the English common law principle that Scotsmen born after the Union of the Crowns were not to be excluded from the privileges of English subjects. See G. L. Beer, *Old Colonial System*, pt. I., vol. I., p. 90, and cf. note 5, below.

² Keith, *Commercial Relations of England and Scotland, 1603-1707*, pp. 72 ff.

³ 12 Car. II. c. 18 (1660), and 15 Car. II. c. 7 (1663). The acts of 22 and 23 Car. II. c. 26 (1670) and 7 and 8 Guil. III. c. 22 (1696), further regulating the plantation trade, also discriminated against the Scots. The question how far the act of 12 Car. II. c. 18 aimed at restricting European trade with England is dealt with by D. O. McGovney, "The Navigation Acts as applied to European Trade", in *Am. Hist. Rev.*, IX. (1904) 725-734.

⁴ 7 and 8 Guil. III. c. 22, sec. xvi.

⁵ *Ibid.*, sec. xi.

⁶ *Ibid.*, sec. xii.

⁷ *Cal. St. Pap. Col.*, 1700, nos. 428, 444, 517, 518, 568, 797, 806, 843, pp. 727, 728.

the Company of Scotland trading to Africa and the Indies, frequently known as the Darien Company, and the failure of the company's attempt to found a trading colony on the Isthmus of Panama, increased the dislike of the Scots for their more prosperous neighbor.⁸

The Scots, on the other hand, troubled the English by persisting in trading with the latter's enemies and colonies,⁹ by enacting retaliatory legislation similar to England's, and by organizing a trading company that might compete with English commerce in the East and West Indies. These and other causes tended to increase the mutual aversion of the subjects of the two kingdoms until they were forced to choose between a separation of the crowns, and a closer incorporating union, under a common Parliament and within a single commercial system. Such a union had been realized under Cromwell. An attempt made in 1670 to agree on a parliamentary union failed.¹⁰ William III. recommended such a union, and Queen Anne, in her first speech to Parliament, proposed it. England's entry into war with France increased her need of better relations with Scotland. Commissioners of both nations, appointed to treat for a union, conferred from November, 1702, to February, 1703, but without reaching a final accord.¹¹ In these negotiations the English assented to free trade between the two kingdoms and, reluctantly,¹² to equal freedom in colonial commerce for subjects of both realms; but they did not accept the Scots' proposal regarding the African and Indian Company.

During the two years following these futile negotiations the breach widened. By the Act of Security the Scottish Parliament threatened the separation of the crowns upon the death of Queen Anne unless England agreed to revised terms of union more favorable to the Scots.¹³ In retaliation the English Parliament passed two acts adverse to Scottish interests.¹⁴ The first however

⁸ Among the many writings concerning the Darien Company are: James S. Barbour, *A History of William Paterson and the Darien Company* (1907); W. L. Mathieson, *Scotland and the Union* (1905), pp. 28-58; P. Hume Brown, *History of Scotland*, III. (1909) 24-38. A forthcoming study of the company by G. P. Insh promises to be of much value. [*The Company of Scotland trading to Africa and the Indies* (London, 1932).] Mr. Insh has also edited a volume of *Papers relating to the Ships and Voyages of the Company of Scotland trading to Africa and the Indies*, in *Publications of the Scottish History Society*, third ser., vol. VI. [Published in 1924.]

⁹ On Scotsmen's illicit trade with the colonies see H. L. Osgood, *American Colonies in the Eighteenth Century*, I. 128, 161, 165-178; T. Keith, "Scottish Trade with the Plantations before 1707", in *Scottish Hist. Rev.* VI. (1908) 36 ff.; *id.*, "Commercial Relations of England and Scotland", *ibid.*, pp. 118 ff.

¹⁰ Papers relating to the union negotiations in 1670 are given in an appendix to C. S. Terry, *The Cromwellian Union* (1902), in *Publications of the Scottish Hist. Soc.*, vol. XL.

¹¹ *Acts of the Parliaments of Scotland*, vol. XI, app., pp. 145-161.

¹² In response to the proposal of the Scottish commissioners "That the subjects of both kingdoms and their seamen and shipping have equal freedom of trade and commerce to and from the Plantations and be under the same regulation", the English commissioners said "That the Plantations are the property of Englishmen, and that this trade is of so great a consequence and so beneficiall as not to be communicated as is proposed till all other particulars, which shall be thought necessary to this Union be adjusted". *Ibid.*, vol. XI, app., pp. 152, 153.

¹³ *Ibid.*, XI. 136, 137.

¹⁴ 3 and 4 Anne c. 7, "An Act for the effectual securing the kingdom of England from the apparent dangers that may arise from several Acts lately passed in the Parliament of Scotland"; and 3 and 4 Anne c. 8, "An Act to permit the exportation of Irish linen cloth to the Plantations, and to prohibit the importation of Scotch linen into Ireland".

included an offer of adjustment. It authorized the queen to appoint commissioners to treat for a union, provided that the Scottish Parliament should previously empower her to name commissioners representing Scotland for that purpose. The Scottish Parliament acceded to the proposal. The alternatives were union or the economic ruin of Scotland or war. In mid-April, 1706, conferences began in the Council chamber of the Cockpit in Whitehall.¹⁵ The Scottish commissioners, after proposing a federal union, accepted the English plan for an entire union and the Hanoverian Protestant succession, provided that all subjects of the United Kingdom should have "full freedom and intercourse of trade and navigation to and from any port or place within the said United Kingdom and Plantations thereunto belonging, and [that] there be a communication of all other privileges and advantages, which do or may belong to the subjects of either kingdom".¹⁵ This proviso the English accepted as "a necessary consequence for an entire Union".¹⁶ To make the principle of uniformity of taxation and of trade regulation throughout the United Kingdom acceptable to the Scots, they also agreed to pay Scotland an "equivalent" for what she should be taxed toward payment of England's pre-union debts. Out of this equivalent, fixed at the amount of £398,085 10s., the capital stock of the African and Indian Company of Scotland and the interest thereon were to be refunded. Immediately upon payment the company was to be dissolved.¹⁷ After these and other matters had been adjusted the treaty was signed on July 22, 1706.

Despite the strong popular opposition in Scotland to an incorporating union, the Scottish Parliament sanctioned the treaty, with only a few slight changes. It was later approved by the English Parliament in an act to which the queen gave the royal assent on March 6, 1707.

The treaty was important for the colonies.¹⁸ Copies were sent to the governors, who were instructed to publish it in the most solemn manner, and were reminded that henceforth Scotsmen were to be regarded "as Englishmen to all intents and purposes whatsoever".¹⁹ In some of the colonies, at least, the treaty was welcomed.²⁰

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¹⁵ For proceedings of the commissioners see *Acts of the Parliaments of Scotland*, XI. 162-200.

¹⁶ *Ibid.*, p. 166.

¹⁷ *Ibid.*, pp. 168-184, *passim*.

¹⁸ See H. L. Osgood, *op. cit.*, I. 226, 227.

¹⁹ *Cal. St. Pap. Col.*, 1706-1708, nos. 883, 889-897, 905-908.

²⁰ *Id.*, 1708-1709, nos. 65 (iv), 230, 443, and *id.*, 1710-1711, no. 835 (xix).

Text: Printed. Treaty. *Acts of the Parliaments of Scotland*, vol. XI., app., "Minutes of Proceedings in Parliament", pp. 201-205, with facsimile of the signatures and seals; *Journals of the House of Lords*, XVIII. 207-212; Daniel Defoe, *History of the Union between England and Scotland* (1786), pp. 197-208; A. Boyer, *History of the Reign of Queen Anne, digested into Annals: Year the Fifth* (1707), app. no. 3; [John Bruce], *Report on the Events which produced the Union of the Kingdoms of England and Scotland, on the Effects of this Event*, etc. [1799], vol. II., app. no. 55, pp. dxxi-dxli. **Act of ratification of Scottish Parliament.** *Acts of the Parliaments of Scotland*, XI. 406-414; *Journals of the House of Lords*, XVIII. 212-219; Cobbett's *Parliamentary History of England*, vol. VI., app. no. 2, cols. clxxxiii-ccix; Defoe, *op. cit.*, pp. 527-543; A. Boyer, *op. cit.*, app. no. 12. **Act of ratification of English Parliament.** *Statutes of the Realm*, VIII. 566-577; A. Boyer, *op. cit.*, app. no. 19. **Exemplification of English act of ratification sent to Scottish Parliament.** *Acts of the Parliaments of Scotland*, XI. 446-458; Cobbett's *Parliamentary History*, vol. VI., app. no. 2, cols. ccix-ccxxii; Defoe, *op. cit.*, pp. 543-566.

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References: Later Writings. Theodora Keith, *Commercial Relations of England and Scotland, 1603-1707* (1910), chs. IV.-VI.; *id.*, "Scottish Trade with the Plantations before 1707", in *Scottish Hist. Rev.*, VI. (1908-1909) 32-48; G. P. Insh, *Scottish Colonial Schemes, 1620-1686* (1922), chs. IV. and V., *passim*; H. L. Osgood, *The American Colonies in the Seventeenth Century* (1907-1909), III. 212 ff.; *id.*, *The*

American Colonies in the Eighteenth Century (1924-1925), I. 128, 161-180, *passim*, 226, 227; G. L. Beer, *The Old Colonial System*, pt. I. (1912), vol. I., pp. 85-91, vol. II., pp. 10, 11, 17, 46, 287; James Mackinnon, *The Union of England and Scotland* (1896); W. L. Mathieson, *Scotland and the Union, 1695-1747* (1905), chs. I.-III.; P. Hume Brown, *History of Scotland* (1909), vol. III., bk. VII., ch. III.; *id.*, *The Legislative Union of England and Scotland* (1914); A. V. Dicey and R. S. Rait, *Thoughts on the Union between England and Scotland* (1920), pts. II. and III., *passim*.

TEXT.²¹

An Act for an Union of the Two Kingdoms of England and Scotland.

Most gracious sovereign,²²

Whereas articles of union were agreed on the twenty second day of July in the fifth year of your Majesties reign by the commissioners nominated on behalf of the kingdom of England under your Majesties great seal of England bearing date at Westminster the tenth day of April then last past, in pursuance of an act of Parliament made in England in the third year of your Majesties reign, and the commissioners nominated on the behalf of the kingdom of Scotland under your Majesties great seal of Scotland bearing date the twenty seventh day of February in the fourth year of your Majesties reign, in pursuance of the fourth act of the third session of the present Parliament of Scotland, to treat of and concerning an union of the said kingdoms, and whereas an act hath passed in the Parliament of Scotland at Edinburgh the sixteenth day of January in the fifth year of your Majesties reign wherein 'tis mentioned that the estates of Parliament considering the said articles of union of the two kingdoms had agreed to and approved of the said articles of union with some additions and explanations, and that your Majesty with advice and consent of the estates of Parliament for establishing the Protestant religion and Presbyterian church government within the kingdom of Scotland had passed in the same session of Parliament an act intituled Act for securing of the Protestant religion and Presbyterian church government, which by the tenor thereof was appointed to be inserted in any act ratifying the treaty, and expresly declared to be a fundamental and essential condition of the said treaty or union in all times coming, the tenor of which articles as ratified and approved of with additions and explanations by the said act of Parliament of Scotland follows:

4. That all the subjects of the United Kingdom of Great Britain shall from and after the union have full freedom and intercourse of trade and navigation to and from any port or place within the said United Kingdom and the dominions and plantations thereunto belonging, and that there be a communication of all other rights, privileges, and advantages which do or may belong to the subjects of either kingdom except where it is otherwise expresly agreed in these articles.

²¹ The text is taken from *Statutes of the Realm*, VIII. 566-577.

²² At the head of the manuscript act preserved among the House of Lords MSS. are the words, "La Reigne le Veut", and, to the right of these, "Soit Baillé aux Seigneurs. A ceste Bille les Seigneurs sont Assenties".

15. That whereas by the terms of this treaty the subjects of Scotland for preserving an equality of trade throughout the United Kingdom will be liable to several customs and excises now payable in England which will be applicable towards payment of the debts of England contracted before the union, it is agreed that Scotland shall have an equivalent for what the subjects thereof shall be so charged towards payment of the said debts of England in all particulars whatsoever in manner following, *viz.* That before the union of the said kingdoms the sum of three hundred ninety eight thousand and eighty five pounds ten shillings be granted to her Majesty by the Parliament of England for the uses after mentioned, being the equivalent to be answered to Scotland for such parts of the said customs and excises upon all exciseable liquors with which that kingdom is to be charged upon the union as will be applicable to the payment of the said debts of England according to the proportions which the present customs in Scotland, being thirty thousand pounds per annum, do bear to the customs in England computed at one million three hundred forty one thousand five hundred and fifty nine pounds per annum, and which the present excises on exciseable liquors in Scotland, being thirty three thousand and five hundred pounds per annum, do bear to the excises on exciseable liquors in England, computed at nine hundred forty seven thousand six hundred and two pounds per annum, which sum of three hundred ninety eight thousand eighty five pounds ten shillings shall be due and payable from the time of the union. And in regard that after the union Scotland becoming liable to the same customs and duties payable on import and export and to the same excises on all exciseable liquors as in England, as well upon that accmpt as upon the accmpt of the encrease of trade and people (which will be the happy consequence of the union), the said revenues will much improve beyond the before mentioned annual values thereof, of which no present estimate can be made, yet nevertheless for the reasons aforesaid there ought to be a proportionable equivalent answered to Scotland, it is agreed that after the union there shall be an accmpt kept of the said duties arising in Scotland to the end it may appear what ought to be answered in Scotland as an equivalent for such proportion of the said encrease as shall be applicable to the payment of the debts of England. And for the further and more effectual answering the several ends hereafter mentioned it is agreed that from and after the union the whole encrease of the revenues of customs and duties on import and export and excises upon exciseable liquors in Scotland over and above the annual produce of the said respective duties as above stated, shall go and be applied for the term of seven years to the uses hereafter mentioned, and that upon the said accmpt there shall be answered to Scotland annually from the end of seven years after the union, an equivalent in proportion to such part of the said encrease as shall be applicable to the debts of England, and generally that an equivalent shall be answered to Scotland for such parts of the English duties as Scotland may hereafter become liable to pay by reason of the union, other than such for which appropriations have been made by Parliament in England of the customs or other duties on export and import excises on all exciseable liquors in respect of which debts equivalents are herein before provided. And as for the uses to which the said sum of three hundred ninety eight thousand eighty five pounds ten shillings to be granted as aforesaid, and all other monies which are to be answered or allowed to Scotland as aforesaid, are to be applied, it is agreed that in the first place out of the aforesaid sum what consideration shall be found necessary to be had for any

losses which private persons may sustain by reducing the coin of Scotland to the standard and value of the coin of England may be made good; in the next place that the capital stock or fund of the African and Indian Company of Scotland advanced, together with interest for the said capital stock after the rate of five per centum per annum from the respective times of the payment thereof shall be paid. Upon payment of which capital stock and interest it is agreed the said company be dissolved and cease, and also that from the time of passing the act of Parliament in England for raising the said sum of three hundred ninety eight thousand eighty five pounds ten shillings the said company shall neither trade nor grant licence to trade, providing that if the said stock and interest shall not be paid in twelve months after the commencement of the union, that then the said company may from thenceforward trade or give licence to trade until the said whole capital stock and interest shall be paid. . . .

25. That all laws and statutes in either kingdom so far as they are contrary to or inconsistent with the terms of these articles or any of them shall from and after the union cease and become void and shall be so declared to be by the respective Parliaments of the said kingdoms.

As by the said Articles of Union ratified and approved by the said Act of Parliament of Scotland, Relation being thereunto had, may appear.

Separate article of the treaty of alliance and commerce, concluded between Anne, Queen of Great Britain, and Charles III., King of Spain, at Barcelona, June 29/July 10, 1707. Ratification by Charles III., December 29, 1707/January 9, 1708. [Ratification by Queen Anne, September 5/16, 1707.]

INTRODUCTION.

In payment for the financial and military support given by England to the Austrian Archduke Charles¹ in his attempt to gain possession of the Spanish throne, the English government intended to acquire large commercial privileges in the European and American dominions of Spain. To clear the way for the future expansion of English trade in Spanish America it also desired Charles's immediate assistance in encouraging the Spanish-Americans to "free themselves from the yoke" of French control of trade in those parts, especially of control of the slave trade.² It instructed its plenipotentiaries, the Earl of Peterborough and General James Stanhope, respectively ambassador extraordinary and envoy extraordinary to Charles III., to secure the best possible conditions for commerce; but it expected no results from their negotiations until Charles should be master of Madrid, or Cadiz, and surrounded by Spanish councillors.³

In May, 1706, the arrival of Stanhope with reinforcements at Barcelona, where Charles was besieged, brought about the relief of the city. In the following month an army from Portugal under the Earl of Galway entered Madrid, where on July 2 Charles was proclaimed King of Spain and the Indies. Before Charles could reach the capital Galway was forced to evacuate it. He joined Charles and with their united forces they retreated to Valencia, whence, in March, 1707, Charles departed for Barcelona.⁴ Stanhope

¹ In regard to the Archduke see above, Doc. 92.

² *Cal. St. Pap. Col.*, 1706-1708, pp. 15-18. Copies of instructions to the governor of Jamaica, and of the "Account of the French monopolizing the Spanish trade in the West Indies" were delivered to Stanhope with his credentials, instructions, and other papers on Feb. 7/18, 1705/6. P. R. O., St. Pap. For., Foreign Entry Books, vol. 129, p. 52. On July 9, 1706, Peterborough and Stanhope were informed that the English government having received reports of the inclination of the Spaniards in the West Indies to declare for Charles III., an account of the great successes of the allied arms in Catalonia had been sent to the governor of Jamaica to be dispersed in Spanish America, together with assurances of aid to those who acknowledged the Austrian King of Spain. The English plenipotentiaries were to urge Charles to further his own interests in the West Indies by sending thither Spanish military officers and soldiers, commissioners to regulate the civil government, and ecclesiastics. P. R. O., St. Pap. For., Spain, vol. 76.

³ Instructions of June 7, 1706, in P. R. O., St. Pap. For., Spain, vol. 76, and Foreign Entry Books, vol. 129.

⁴ A detailed account of the military operations in Spain is in A. Parnell, *The War of the Succession in Spain* (1905).

soon followed him, to press for a treaty of commerce.⁵ The task devolved upon him alone, since the Earl of Peterborough had previously been recalled to England.⁶

The aims of the English government are clearly indicated in the instructions and projects of treaties sent to Peterborough and Stanhope. The project of a treaty of alliance and commerce sent in June, 1706, was based on the proposals presented on behalf of English merchants to Secretary Nottingham, upon Charles's arrival in England on his way to Spain.⁷ The proposals bearing on America provided for the renewal of earlier treaties and grants of privileges; concession to the English of all privileges granted or to be granted to any other nation; the deferment of payment of the duty, called *millons*, on Newfoundland fish, until the actual sale of the fish by the importer; rectification of the book of rates for English goods; liberty for the English and other nations in amity with Spain to export the silver coming from the West Indies, coined and uncoined (*i. e.*, pieces of eight and bars), upon payment of two per cent. to the king; liberty for the English to send their woollen manufactures and other merchandise from Spain to the Spanish West Indies in Spanish ships and by Spaniards; a prohibition to prevent Spaniards entrusted by the English with their effects for the West Indies from charging more proportionately for *indulto*, at the return of the ships from the West Indies, than would be charged on Spaniards' goods. The articles of the project covered most of these proposals, and the plenipotentiaries were to do their utmost to obtain still better terms for trade. Although the *assiento* was not mentioned in the project, they were instructed to take steps to procure it for English merchants on as good terms as the French enjoyed.⁸

Stanhope considered the project extremely modest and asked for latitude to try to secure greater privileges.⁹ A second project, sent in November,¹⁰ significantly omitted the proviso that English goods exported from the dominions of Spain (*i. e.*, to the West Indies) should be carried in Spanish ships. If however Stanhope could not obtain permission for their transportation in English ships without delaying the negotiation, he was not to insist on that point, for the English government desired to conclude the treaty quickly, while Charles remained dependent on its support.¹¹ Stanhope was privately instructed to secure two important concessions: (1) reimbursement for Queen Anne's expenditures in Charles III.'s behalf, (2) the *assiento*, pur-

⁵ Lord Mahon, *War of the Succession in Spain* (second ed., 1836), app., pp. xlvii, xlix.

⁶ His revocation is dated Dec. 23, 1706 (O. S.). P. R. O., St. Pap. For., For. Entry Books, vol. 130.

⁷ *Ibid.*, vol. 129, pp. 77-81.

⁸ *Ibid.*, p. 68.

⁹ Stanhope to Secretary Hedges, Oct. 5, 1706, St. Pap. For., Spain, vol. 76.

¹⁰ Nov. 21, 1706, St. Pap. For., Spain, vol. 76, and For. Entry Books, vol. 129.

¹¹ Sunderland to Stanhope, Apr. 15, 1707, St. Pap. For., For. Entry Books, vol. 208, p. 70.

suant to a project of thirty articles.¹² This project was virtually copied from the French *assiento* of 1701,¹³ except for the omission of the *allanamientos*, and two or three insignificant articles.¹⁴ Stanhope seems not to have mentioned the matter of reimbursement, deeming the time inappropriate.¹⁵ He did not succeed in bringing about the conclusion of the *assiento*. The treaty of alliance and commerce,¹⁶ of eight articles and a most important separate article, printed below,¹⁷ was signed on June 29/July 10, 1707, and ratified by Queen Anne and Charles III.¹⁸

The first article of the treaty provided for peace and mutual assistance; the second, for the renewal of earlier treaties and privileges; the third, for the prompt release of prisoners made by either side during the recent disturbances in Spain, of whom many were still in custody, especially in America. The fourth article, stipulating that goods imported by English nationals into Spain need not pay duties until six months after their unloading or sale, was important to importers of Newfoundland fish. The fifth article permitted Englishmen to bring Moroccan products into Spanish lands, on their own ships and in their own names; the sixth stipulated that English and Spanish commissioners should draw up a new book of rates on British imports into Spain. The separate article provided for the eventual formation of an Anglo-Spanish company for Spanish-American trade, or, if this should prove impracticable, the same privileges for Englishmen as for Spaniards with respect to free trade to the Indies. Between the date on which a general peace should be concluded and Charles III. should obtain possession of the Indies, and the date of the establishment of the commercial company Englishmen might trade in any part of Spanish America with ten ships of 500 tons each, or with any number of ships whose combined capacity did not exceed 5000 tons. These ships were to be convoyed by English warships. French subjects were to be excluded forever not only from the Company of Commerce, but also from any traffic whatsoever in the Spanish Indies. Neither Spain nor Great Britain would ever enter into any agreement contrary to this exclusion of the French from the Spanish-American trade.

¹² The *projet* is printed in G. Scelle, *La Traite Négrière*, II. 699-703.

¹³ Doc. 89.

¹⁴ A full discussion of the *projet* is in Scelle, *op. cit.*, II. 467 ff.

¹⁵ Sunderland to Stanhope, Apr. 15, 1707, St. Pap. For., For. Entry Books, vol. 208, p. 70.

¹⁶ The text of this treaty will be found in the volumes referred to in the Bibliography as containing the text of the separate article.

¹⁷ Secretary Sunderland wrote to Stanhope on Aug. 5, 1707, "The separate article seems to me to be a very good and full equivalent and I believe will be thought so when the treaty is laid before the Lords of the Committee of Council, which it will be in a few days". P. R. O., St. Pap. For., For. Entry Books, vol. 208, p. 122.

¹⁸ A copy of the queen's ratification is in St. Pap. For., For. Entry Books, vol. 130. On Oct. 21, 1707, Sunderland wrote to Stanhope: "You will receive by this express the Spanish treaty ratified. I must at the same time acquaint you how much the Queen is satisfied with the treaty and with the part you have acted in bringing it to a conclusion. I don't doubt, notwithstanding the cloud that hangs at present over our Spanish affairs, we shall live to see the nation reap a great advantage, and you a great deal of honour from it." For. Entry Books, vol. 208.

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Text: Printed. Spanish. A. del Cantillo, *Tratados de Paz y de Comercio* (1843), pp. 50-52.

Translation: French. G. de Lamberty, *Mémoires pour servir à l'Histoire du XVIII^e Siècle* (second ed., 1734-1740), IV. 595-598; G. F. de Martens, *Supplément au Recueil des Principaux Traités* (1802-1808), I. 68-72.

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References: Later writings. G. Scelle, *La Traite Négrière* (1906), II. 460-478; C. von Noorden, *Europäische Geschichte im Achtzehnten Jahrhundert* (1870-1882), II. 224-226; O. Klopp, *Der Fall des Hauses Stuart* (1875-1888), XII. 509, 510; Lord Mahon, *op. cit.*, pp. 176, 177, 267, 268; John Campbell, *Lives of the Admirals* (third ed., 1761), IV. 37-41.

TEXT.¹⁹

Carolus, Dei gratia rex Castellae, Legionis, Aragonum, Utriusque Siciliae, Hyerusalem, necnon Indiarum etc. archidux Austriae, dux Mediolani, Burgundiae, et Brabantiae, comes Abspurg, Flandriae, et Tyrolis etc. Omnibus, et singulis, ad quos praesentes litterae pervenerint, salutem. Cum quidam secretus articulus inter nos, et Serenissimam ac Potentissimam principem Annam Magnae Britanniae reginam, Barcinonae, die decimo mensis Julii superioris, verbis, quae sequuntur, conclusus et signatus fuerit,

Maximo flagrantis desiderio Serenissimi Potentissimique principes Carolus Tertius Hispaniarum Rex, et Anna Magnae Britanniae Regina vinculo foederis et amicitiae jam statutae, sic amplecti, quod mutuae concinnitudines utilitatesque in subditos utriusque coronae, beneficia tam maxima conferant, ut indisolubili nexu hujusce communis commodi vinciantur; animadvertentes itaque, quod magis consonum ad finem tanti operis sit, ut instituatur apud Indiam Societas Negotiationis (vulgo Compañia de Comercio) quo medio potitis fructibus, quos non laboriose tribuent vastissima et opulenta Indica Catholicae Majestatis regna, adipiscetur utrasque monarchias Hispaniae et Magnae Britanniae, tam terra quam mari, talis viribus muniri, ut, fraenatis hostibus, subditi earum securam pacem, et perpetuam felicitatem congaudeant: Hac de causa vigore hujus secreti articuli concluditur et innitur pactum, quod sit stabilienda Societas Negotiationis inter Hispanos et Anglos dominiis coronae Hispaniae apud Indiam, omnibus utilioribus mediis, ut firmeretur; sed cum nunc non possint concludi, explanari, et ad perfectum finem pacta, conditiones, et circumstantiae hujus operis perveni, dum praemantur sub injusta possessione Ducis Andagavensis provinciae Hispaniae, ubi principalior negotiatio existit, et aptiores personae ad optime peragendum et concludendum praesens punctum, forma danda et habenda in relata Societate

¹⁹ The text is taken from the original MS. of the ratification by Charles III., preserved in the P. R. O. in London.

Negotiationis Indiarum, cum sit Matrī sua Catholica Majestas, reservatur: obligantur tamen (ut in praesens faciunt) Serenissimi Rex Catholicus et Magnae Britanniae Regina ab utroque in quantum sibi attinuerit, animum aplicando ad quidquid visum fuerit pertinere ad perfectum exitum tanti operis, auferendo obstacula et difficultates in contrarium. Sed si varii eventus, qui non scogitari nec preveni possunt, obstarent (quod non creditur) prae-fatam Societatem Negotiationis Indiarum usque ad perfectam conclusionem pervenire; tali autem casu, promittit et se obligat sua Catholica Majestas, se donaturum subditis suae Majestatis Britanniae facultates et privilegia liberae negotiationis Indiarum habita et concessa suismet subditis Hispanis, prae-posita tamen securitate regalium publicorum vectigalium suae Catholicae Majestati ex jure pertinentium. Itidem Serenissimus Rex Catholicus suam fidem praestat, se a die, qua sit universalis pax constituta, et qua integram possessionem dominiorum Indiarum Hispaniae coronae pertinentium obtineat, usque in diem, qua relata Societas Negotiationis ad perfectionem pervenerit, concessurum facultatem subditis Serenissimae Magnae Britanniae Reginae, ut possint quotannis mercaturam aut alteram hujusmodi negotiationem gerere quibusque portubus et Indiarum dominiis ditionis Hispaniae decem navibus, quorum singula quingentas mensuras (vulgo toneladas, et Anglice tunns) [capiet majorisve aut minoris numeri, dum modo in omnibus non excessum fiat quinquies mille mensuram (vulgo toneladas, aut tunns)]²⁰ quibus transferre, vendere, et negotiare poterunt relatis in portubus et dominiis Indicis omnia genera et merces ipsismet subditis Hispaniae suae Majestatis Catholicae ad negotium et transportationem permissae, taliter ut sint solvenda et satisfacienda ab ipsis regia publica vectigalia ex memoratis generibus et mercibus suae Majestati Catholicae ex jure pertinentia; et quod dictae decem naves referantur in publica tabula Portus Gaditani, aut in alia, quam ex omnium Hispaniae portuum sua Catholica Majestas destinaverit ab eo ex-undo, ut se navigationi Indiarum committant, pactum innitentes ex Indiis reversuras in eundemmet Portum Gaditanum, vel in eum, qui (sicut dictum est) a sua Catholica Majestate destinabitur, ut publicis illis tabulis referantur absque priori transitu in aliquem portum Hispaniae, Angliae, et Galliae (excepto indispensabili casu quo adversa enavigatione abstringantur alterum portum tenere) attestationes et testimonia convenientia gubernatorum et ministrorum suae Catholicae Majestatis portantes, fidem facientia legalis observatae bonae fidei, semperque expectatae et servatae nationis Anglicanae in navigatione et negotiatione cum Hispanis.

Similiter sinet et permitet sua Catholica Majestas supradictas decem naves vectorias custodiendas et associandas esse a navibus bellicis Angliae ad suam majorem securitatem et custodiam requisitis tali pacto, ut praedictae bellicae naves nullo modo possint onerari mercibus, sed deserviant solum (ut dictum est) ad custodiam et securitatem praedictarum decem vectoriae navium, manifestando (ut usque nunc facit) sua Catholica Majestas, quod non exiget nec petet indultum, nec quamlibet aliam donationem ratione vectoriae supradictarum decem navium; sed solummodo satisfiet prompta solutione vectigalium Hispaniarum Regi (ut dictum est) ex jure pertinentium; ad hunc finem sua Catholica Majestas imperabit, donanda sint mandata et ordines necessarii, ut illis obex, nec impedimentum aliquod a ministris Hispaniae apud Indiam fiat, immo potius praebeant auxilium et jubamen quod indigerint.

²⁰ The passage between brackets is in the Latin protocol and in substance in the Spanish ratification. It was doubtless omitted from the Latin ratification through an error of the clerk.

Ex parte etiam Magnae Britanniae Reginae pollicetur et promittitur supradictas naves bellicas custodire inservient, tam ad discessum in Indiam quam ad regressum omnibus navibus suae Majestati Catholicae volentibus simili opportunitate frui, ita ut hoc titulo non fiant immorari plus temporis quam indigerint ad propriam suam conductam; et pari modo transvehent in supradictis bellicis navibus argentum, et alia genera sibi tradita et suae Majestati Catholicae pertinentia, tradendo illa personis, quibus sibi praescribitur, debita ratione et fide.

Igitur cum omnibus pateat vires, quibus Galli Europam perturbaverunt, subministratas fuisse ab opulentis thesauris, quos sua fraudulenta introductione mercium et negotiationis ex Indiarum dominiis Hispanis omni tempore extraxere; et cum absdubio sit quod ex utilitate subditorum Hispaniae et Magnae Britanniae sequatur integrum exitium negotiationis Gallorum, ideo stabilitur, firmatur, et (ut conviens) concluditur inter Serenissimos Hispaniarum Regem et Magnae Britanniae Reginam, pro se et pro omnibus suis regibus successoribus, quod usque nunc et in posterum exclusi omnes Galli Regis Gallorum subditi manean, non solum relatae Societatis Negotiationis, sed etiam cujuscumque alterius commercii Hispaniarum Indicis dominiis, quod non possint nec debeant habere directe nec indirecte per se, nec per interpositas personas; obligationem facientes (ut in praesenti fidem obligant) dicti Serenissimi Hispaniarum Rex et Magnae Britanniae Regina pro se, et pro omnibus suis regibus successoribus (ut pote maxime expediens suis dominiis, subditis, et publicae universali quieti) numquam se assensuros pro articulo pacis, nec quolibet alio tractatu, occulto vel manifesto, in minimum oppositum huic exclusioni Francorum subditorum Galliae circa relata Societatem Negotiationis, et commercium Indiarum, et si pro Serenissimo Hispaniae Rege Catholico, vel Serenissima Magnae Britanniae Regina, aut pro alio successore coronis Hispaniae vel Magnae Britanniae secus circa hoc efficiatur includendo Gallis subditis Francorum Regis pro articulo pacis, aut quolibet tractatu publico vel occulto, in relata Societate Negotiationis, vel commercio Indiarum, tali autem eventu, pars Hispaniarum Regis, aut Reginae Magnae Britanniae, vel suorum successorum talem contraventionem facientium nec possit nec debeat jus habere, ut petat, vel praetendat, quod adimpleatur tractatus hujus secreti articuli, et ex consequenti altera pars non contraveniens maneat libero arbitrio et facultate illum irritandi, vel adimplendi, ut illi placuerit.

Et nos Antonius Florianus Sacri Romani Imperii princeps de et in Liechtenstein, Aurei Velleris eques, Sacrae Caesareae Majestatis consiliarius intimus, Catholicae Majestatisque supremus aulae et stabuli praefectus, et Emanuel Joachim Garci-Alvarez a Toledo et Portugal, et Oropesa, et Alcaudete comes, et Joseph Folc a Cardona, de Cardona comes, magnusque Aragonum architalasus, Majestatis Catholicae intimi consilarii, et Serenissimi ac Potentissimi principis Caroli Tertii Hispaniarum Regis plenipotentarii in eundem effectum constituti (prout declaratur in litteris, quarum series ad calcem ipsiusmet tractatus additur) Catholicae Majestatis nomine convenimus et assentimur in praedictis pactibus conditionibusque hujusce secreti articuli; Et ego autem Jacobus Stanhope armiger, in Magnae Britanniae Majestatis exercitibus praefectus, Magnae Britanniae regni senator, et ab ipsa Majestate ablegatus plenipotentariusque Serenissimae ac Potentissimae principis Annae Magnae Britanniae Reginae, ut nonnulla pertinentia ad renovationem amicitiae, foederis, et commercii inter Hispanos et Anglos agenda et convenienda sint (sicut ex tenore facultatis in hujusce finem articuli adjuncto patet) nomine Magnae Britanniae Majestatis pari modo consensus et concordatus

sum omnibus in clausulis circumstantiisque jam expressis hoc articulo separato: Et promittimus utrinque commissarii, plenipotentiarique supranominati, praesentem tractatum approbandum esse, confirmandum, pariter, et ratumfaciendum in omnibus suis numeris et verbis tum a Serenissimo Rege Catholico, tum a Serenissima Magnae Britanniae Regina per litteras patentes sub magno utriusque Majestatis sigillo signatas et in forma valida, efficaci, et sufficienti conceptas, eademque ad invicem tradituri intra decem septimanas a data praesentium numerandas: In cujus rei testimonium, eum manu signavimus, et sigillo muniri fecimus: Barcinonae die decima mensis Julii anno millesimo septingentesimo septimo.

ANTONIUS FLORIANUS,
Princeps de LIECHTENSTEIN.
Comes OROPESSANUS.
ARCHITALASUS ARAGONUM.

JAMES STANHOPE.

[Here follow the powers from the King of Spain and from the Queen of Great Britain to their plenipotentiaries.]

Nos, viso et perpenso articulo secreto praedicto, eundem approbavimus, ratum, gratum, firmumque habuimus, sicut per praesentes, pro nobis, haeredibus, et successoribus nostris, eundem approbamus, ratum, gratum, firmumque habemus, spondentes, et in verbo regio promittentes, nos omnia et singula quae in praedicto secreto articulo continentur, sancte religioseque observaturos et observari curaturos, necque unquam passuros, quantum in nobis est, ut a quopiam violentur, aut ullo modo iis contraveniatur. In quorum majorem fidem, et robur, praesentibus manu nostra regia signatis, magnum nostrum sigillum apponi jussimus. Quae dabantur in civitate nostra Barcinonensi die nono mensis Januarii anno a Nativitate Domini millesimo septingentesimo octavo.

CAROLUS.

TRANSLATION.

Charles, by the grace of God king of Castile, Leon, Aragon and Both Sicilies, Jerusalem and the Indies, etc., archduke of Austria, duke of Milan, Burgundy, and Brabant, count of Hapsburg, Flanders, and Tyrol, etc., to all and singular to whom these presents shall come, greeting. Whereas a certain secret article has been concluded and signed between us and the Most Serene and Most Potent princess Anne, queen of Great Britain, at Barcelona, on July 10, last past, in the following terms:

The Most Serene and Most Potent princes, Charles III., king of Spain, and Anne, queen of Great Britain, most earnestly desiring to strengthen the ties of the already concluded alliance and friendship in such a manner that reciprocal conveniences and advantages shall confer such positive benefits on the subjects of both crowns as will bind them together by an indissoluble bond of mutual profit, and considering that the means best adapted to so great an end is the formation of a Company of Commerce in the Indies, through which supplies will easily be obtained from his Catholic Majesty's immense and rich Indian provinces, which will enable the two monarchies of Spain and Great Britain to be protected, on land and sea, by forces sufficient to subdue their enemies and thus secure for their subjects the enjoyment of assured peace and enduring prosperity—Therefore, by virtue of this secret

article, an agreement is entered into and concluded, that a Company of Commerce shall be formed among the Spaniards and English in the dominions of the Spanish crown in the Indies, by all the most effective means. But since at present it is not possible to conclude, explain, and bring to entire completion, the agreements, conditions, and considerations connected with this matter, while the provinces of Spain, the seat of the most important commerce, and the place of residence of the persons best qualified for executing and completing this affair, continue in the unjust possession of the Duke of Anjou, the determination of the form to be given to the said Company of Commerce of the Indies is postponed until his Catholic Majesty shall be in Madrid. Nevertheless the Most Serene Catholic King and the Queen of Great Britain are bound (as they do now bind themselves) mutually to take the measures that they shall deem most conducive to the complete accomplishment of so great a task, removing the obstacles and difficulties that might hinder it. But if unimaginable and unpreventable contingencies should, incredibly, hinder the complete establishment of the said Company of Commerce, in such case his Catholic Majesty promises and engages to give to the subjects of her British Majesty the liberties and privileges of free trade to the Indies, possessed and enjoyed by his Spanish subjects, provided the royal customs legally pertaining to his Catholic Majesty shall be secured.

In like manner the Most Serene Catholic King engages that from the day on which a general peace is concluded, and on which he shall obtain entire possession of the Indies pertaining to the Spanish crown, until the day on which the said Company of Commerce shall be completely established, he will permit the subjects of the Most Serene Queen of Great Britain to carry on trade in merchandise, or other such commerce, every year, in any ports and dominions of the Spanish Indies, with ten ships, each of the capacity of five hundred tons, or a greater or smaller number of ships, provided that the capacity of all together does not exceed five thousand tons. By means of these ships, they shall be permitted to transport, sell, and trade in the said ports and dominions of the Indies all the wares and merchandise that his Catholic Majesty's Spanish subjects are permitted to trade and transport, on condition of their payment and satisfaction of the royal imposts, legally due to his Catholic Majesty from the said wares and merchandise. The said ten ships shall be registered in the port of Cadiz, or in some other Spanish port to be designated by his Catholic Majesty, as they sail from that port to go to the Indies, promising that from the Indies they will return for registration to the said port of Cadiz, or to the port designated (as has been said) by his Catholic Majesty, without first passing to any other port of Spain, England, or France (except in the case of being compelled by storms to go to another port). They are to bring suitable certificates and testimony from his Catholic Majesty's governors and officials, as assurance that they have observed the law with the good faith always expected of the English nation, and observed by them in their navigation and trade with Spain.

Similarly his Catholic Majesty will allow and permit the aforesaid ten cargo ships to be accompanied and convoyed by the English warships required for their greater security and protection, on condition that the said warships are not to be laden with any merchandise, but are only to be used (as aforesaid) for the convoy and protection of the said ten cargo ships, his Catholic Majesty declaring that he will not demand or seek any *indulto*, or any other contribution, on account of the cargo of the said ten ships, but will be satisfied merely with the prompt payment of the Spanish duties legally pertaining to the King, as has been said. To this end his Catholic Majesty

will cause the necessary commands and orders to be given, that the officials of Spain in the Indies shall not embarrass or hinder them, but rather supply them with the aid and assistance that they may require.

The Queen of Great Britain, on her part, also offers and promises that the aforesaid warships shall serve as a convoy, both in going to the Indies and in returning from them, for all of his Catholic Majesty's ships desiring to avail themselves of such an opportunity, provided that they be not delayed thereby for a longer time than they require for their own preparations; and that the captains, likewise, shall carry in the aforesaid warships silver and other wares, delivered to them and pertaining to his Catholic Majesty, transmitting them to the consignees, with due accounting and fidelity.

Since everyone is aware that the forces wherewith the French have troubled Europe have been maintained by the rich treasures that they have always drawn from the Spanish Indies through their fraudulent importation of goods and illicit commerce, and since there is no doubt that the complete destruction of the French trade would be advantageous to the subjects of Spain and Great Britain, it is therefore agreed, affirmed, and (as is fitting) concluded, between the Most Serene King of Spain and the Queen of Great Britain, for themselves and for all the kings their successors, that all the French, subjects of the King of France, shall be excluded, henceforth and forever, not only from the said Company of Commerce, but also from any other traffic in the Spanish Indies, which they may not and ought not to carry on, directly or indirectly, either by themselves or through intermediaries; the said Most Serene King of Spain and Queen of Great Britain engaging, for themselves and for all their royal successors—an engagement of the greatest possible advantage to their dominions and subjects, and to the general repose of Christendom—that they will never, by virtue of any article or treaty of peace secret or public, agree to the least thing contrary to this exclusion of the French subjects of France from the said Company of Commerce, and from the trade of the Indies. And if the Most Serene Catholic King of Spain or the Most Serene Queen of Great Britain, or any other successor to the crowns of Spain or Great Britain, shall act otherwise in this matter, by admitting the French subjects of the King of France to the said Company of Commerce or to the trade of the Indies by virtue of any article or treaty of peace, public or secret, then, in this event, the contravener, whether the King of Spain, or the Queen of Great Britain, or their successors, neither may nor should have the right to seek or demand the fulfillment of this secret article of the treaty, and consequently the party not contravening this article shall have free choice and power either to annul it, or to cause it to be executed, as he pleases.

And we, Anton Florian, prince of the Holy Roman Empire in and of Liechtenstein, knight of the Golden Fleece, privy councillor of his Sacred Imperial Majesty, and his Catholic Majesty's majordomo and master of the horse, and Don Manuel Joaquin Garzia Alvarez of Toledo and Portugal, count of Oropesa and Alcaudete, and Don José Fole of Cardona, count of Cardona, admiral of Aragon, privy councillor of his Catholic Majesty, appointed plenipotentiaries of the Most Serene and Most Potent prince Charles III. King of Spain for this purpose (as is stated in the full powers of which a copy is added at the foot of this treaty) consent and agree in the name of his Catholic Majesty to the aforesaid stipulations and conditions of this secret article. And I, James Stanhope, esquire, general in the armies of her Majesty of Great Britain, member of the British Parliament, and appointed by her Majesty ambassador and plenipotentiary of the Most Serene

and Most Potent princess Anne, queen of Great Britain, in order to negotiate and conclude certain matters pertaining to the re-establishment of amity, alliance, and commerce between the Spaniards and the English (as appears from the tenor of the powers added to the end of this article) have in like manner consented and agreed, in the name of her Majesty of Great Britain, to all the clauses and conditions expressed in this separate article. And we, the abovenamed commissioners and plenipotentiaries of both sides, promise that the present treaty shall be confirmed, approved, and ratified, in all its parts and words, by the Most Serene Catholic King and by the Most Serene Queen of Great Britain by letters patent, sealed with the great seal of each of their Majesties, and drawn up in valid, effective, and sufficient form, and that these shall be mutually exchanged within ten weeks from the date of these presents.

In testimony whereof we have signed this with our hand and caused it to be sealed with our seal. Barcelona, July 10, 1707.

ANTON FLORIAN,
Prince of LIECHTENSTEIN.
Count of OROPESA.
THE ADMIRAL OF ARAGON.

JAMES STANHOPE.

[Here follow the powers from the King of Spain and the Queen of Great Britain to their respective plenipotentiaries.]

Having seen and considered the aforesaid secret article, we have approved it, and have regarded it as ratified, accepted, and established, as by these presents we do approve it, and regard it as ratified, accepted, and established, engaging and promising on our royal word that we will observe and will cause to be observed, sacredly and religiously, the contents of the aforesaid secret article, all and singular, and, so far as we are able, will never permit them to be violated by any one, or contravened in any way. For the greater guaranty and support whereof, after these presents had been signed by our royal hand, we ordered our great seal to be affixed. Given in our city of Barcelona, January 9, 1708.

CHARLES.

Preliminary articles for a treaty of peace, signed by the plenipotentiary of France and the two principal secretaries of state of Great Britain at London, September 27/October 8, 1711.

INTRODUCTION.

After the defection of Portugal and Savoy,¹ the loss of Gibraltar, Charles III.'s arrival in Spain,² and the battle of Blenheim, Louis XIV. felt the necessity of coming to terms with the allies. From 1705 numerous French agents conferred with Dutch statesmen—Heinsius, Buys, Duvenvoorde, Van der Dussen, and others—and with Marlborough, regarding bases for an agreement.³ The essential matter to be decided was the disposition to be made of the scattered territories once subject to the late King Charles II. of Spain. By October, 1705, Louis XIV. had lost hope of securing his grandson Philip's succession to the entire Spanish monarchy.⁴ He proposed instead to leave Spain and the Indies, the Milanese, the Spanish possessions in Tuscany, and the Mediterranean islands to Philip V., but not Naples, Sicily, or the Spanish Netherlands.⁵ Later, in view of his defeat at Ramillies and the weakening of Philip's hold on Spain, and with the hope of luring the Dutch into an alliance, he let Heinsius know, in August, 1706, that he would be willing to yield Spain and the Indies to Charles III., if Philip V. retained Naples, Sicily, and the Milanese, with the title of King.⁶ Marlborough, to whom Heinsius disclosed these overtures, believed that England, both by treaty and interest, was "obliged to preserve the monarchy of Spain entire".⁷ Bourbon rule in Italy would threaten England's Levantine trade.

¹ For the treaty concluded between Portugal and the allies in May, 1703, see above, Doc. 92.

² See above, Doc. 95.

³ A detailed account of these *pourparlers* is given by Legrelle, *La Diplomatie Française et la Succession d'Espagne* (second ed.), tom. V., ch. V. Instructions given to Helvétius and d'Alègre in 1705 and to Dugué de Bagnols in 1707 are in *Recueil des Instructions*, XXII., *Hollande*, II. 120-126, 131-151, 153-159. Another important source is G. G. Vreede, *Correspondance Diplomatique et Militaire du Duc de Marlborough, du Grand-Pensionnaire Heinsius, et du Trésorier-Général des Provinces-Unies, Jacques Hop; enrichie de Plusieurs Lettres du Comte d'Avaux, de MM. de Chamillart, de Torcy, et d'Autres Hommes d'Etat, relatives aux Négociations Secrètes, entamées par la France après la Bataille de Ramillies, 1706, 1707* (1850). Cf. also Hist. MSS. Comm., *Fourteenth Report*, app., pt. IX., *Earl of Buckinghamshire MSS.* (1895), pp. 317 ff.

⁴ See d'Alègre's instructions, Oct. 6, 1705, in *Recueil des Instructions*, *op. cit.*, II. 138 ff.

⁵ *Ibid.* Naples and Sicily were assigned to the Elector of Bavaria, who was to be persuaded to cede his electorate to Charles III. The Spanish Netherlands might be given to the Duke of Lorraine.

⁶ Legrelle, *op. cit.*, V. 266 ff.

⁷ Vreede, *op. cit.*, p. 97; Coxe, *Memoirs of Marlborough* (Bohn's ed.), I. 483, 487.

Political conditions changed in 1707. Philip V. regained most of Spain, and lost Naples to the Imperialists. Henceforth his logical portion of the Spanish monarchy was Spain and the Indies.

Near the close of 1707 Louis XIV., in another attempt to entice the Dutch into a separate peace, sent Nicolas Mesnager⁸ to offer them great economic advantages. Mesnager, lately employed in advancing French commercial interests at Madrid,⁹ had persuaded the Junto de Comercio there to agree to a new liberal plan for Spanish-American trade which would permit allies of Spain to send their merchandise to America in their own name, and with the same prerogatives as the Spaniards, but on Spanish ships.¹⁰ He was to explain to the Dutch how, by means of this plan, they might profit from the maintenance of Philip V.'s rule in Spain. At the same time he was tactfully to intimate that England was reported to have concluded with Charles III. a secret treaty, giving her exclusive commercial privileges in the Indies.¹¹ His bait failed to ensnare the Dutch.

Military disasters in 1708 forced Louis to propose terms resembling those made in 1706. He was again prepared to surrender Spain and the Indies to the Hapsburgs,¹² and so informed the King and Queen of Spain.¹³ Philip V., given moral support by the queen and the Princesse des Ursins, firmly refused to relinquish Spain and the Indies.¹⁴ Independently of France, at the end of 1708, he authorized a Flemish statesman, the Count de Bergeyck, to make overtures in his behalf to the Dutch.¹⁵ Bergeyck was to propose that Spain and the Indies be left to Philip V., that Spanish Italy be allotted to Charles III., and the Spanish Netherlands to the Dutch. He was empowered

⁸ On Mesnager and his mission see *Recueil des Instructions*, *op. cit.*, II. 159-177, 189, 190; J. B. Colbert, *Mémoires*, in Michaud and Poujoulat, *Nouvelle Collection*, sér. 3, tom. VIII., pp. 555, 556; Legrelle, *op. cit.*, V. 301-305, VI., app. 2; G. Scelle, *La Traite Négrière*, II. 477, 478; Dahlgren, *La France et les Côtes de l'Océan Pacifique*, I. 498, 499, 565, 566, 571, 572, et *passim*; Baron de Girardot, *Correspondance de Louis XIV. avec M. Amelot* (1863, 1864), II. 28, 29, 57, et *passim*; Abbé Millot, *Mémoires de Noailles*, in Michaud and Poujoulat, *Nouvelle Collection*, sér. 3, tom. X., pp. 203, 204; Klopp, *Fall des Hauses Stuart*, XIII. 161. For an account of a second fruitless mission of Mesnager to the United Netherlands early in 1709 see Dahlgren, *op. cit.*, pp. 574, 575.

⁹ *Ibid.*, pp. 323 ff.

¹⁰ *Ibid.*, pp. 343, 344.

¹¹ For the treaty see above, Doc. 95.

¹² Louis XIV. wrote to his ambassador in Spain on Oct. 15, 1708, "Personne de ceux qui ont le plus de part aux affaires n'approfondira les expédients qu'on pourrait proposer pour la sûreté du commerce; au contraire, ils établiront comme un principe incontestable qu'il sera totalement perdu pour les Anglois et pour les Hollandois, si le roy mon petit-fils demeure maître de l'Espagne et des Indes, et sur cette supposition fausse ils persisteront à demander que l'Espagne et les Indes soient abandonnés à l'archiduc comme un préliminaire du traité de paix. C'est à cette seule condition que les Hollandois ont jusqu'à présent déclaré qu'ils pourroient entrer en négociation." Girardot, *op. cit.*, II. 84. It is of interest to note that a few months later Louis XIV. wrote to Amelot that "le principal objet de la guerre présente est celui du commerce des Indes et des richesses qu'elles produisent". *Ibid.*, p. 121.

¹³ *Ibid.*, pp. 89, 91.

¹⁴ *Ibid.*, pp. 91, 92; Abbé Millot, *op. cit.*, pp. 206 ff.; A. Baudrillart, *Philippe V. et la Cour de France*, I. 321-327.

¹⁵ On Bergeyck's mission to the United Netherlands, 1709, 1710, see Legrelle, *op. cit.*, V. 431-445, 479, 480; Baudrillart, *op. cit.*, I. 349-353; Scelle, *op. cit.*, II. 478-482; *Recueil des Instructions*, *op. cit.*, II. 191-193; Torcy, *op. cit.*, pp. 556, 557.

to make great concessions in regard to American trade, in which the English and Dutch were to participate as members of a trading company. His task was like Mesnager's—to persuade the Dutch that their commercial interests in Spain and Spanish America would be best served by Philip's continued possession of the Spanish crown. The chief and indirect result of Bergeyck's mission was to further Franco-Dutch negotiations.

Obviously Philip V.'s agent could not make the preliminary concessions demanded by Van der Dussen—"Spain, the Indies, the Milanese and the Spanish Netherlands, together with what has been added, as also a favorable treaty of commerce";¹⁶ but the Marquis de Torcy, the French minister for foreign affairs, about a fortnight previously and through the agency of Petkum, had offered almost identical terms to Heinsius.¹⁷ Learning of Van der Dussen's memorial, Louis XIV. accepted it as a basis for negotiating a general peace;¹⁸ and, to treat for such a peace, sent President Rouillé in March, 1709, to the United Netherlands.

The English government, knowing of the overtures made by France and Philip V. to the Dutch, feared lest its allies might be induced to withdraw from the war. To prevent such defection and at the same time obtain the States General's guaranty of the Hanoverian succession, the British Cabinet was willing to sign a Barrier treaty, long desired by the Dutch as security against French aggression.¹⁹ Marlborough was instructed, on March 21/April 1, 1709, to declare to Heinsius that no negotiation for peace should be concluded with France until the preliminaries were agreed on between England and the States. He was to propose as preliminaries the restoration of the whole Spanish monarchy to the house of Austria; and, for the particular advantage of England, acknowledgment by France of Queen Anne's title and succession to the crown; the removal of the Pretender from France; and the destruction of the fortifications and harbor of Dunkirk. Other preliminaries were to be required in behalf of the States, particularly a barrier, which the queen would guarantee, on the understanding that the States would in like manner guarantee the Protestant succession.²⁰

The Dutch drew up a project of a treaty claiming much in addition to a barrier that would enable them to dominate the Spanish Netherlands—and promising not to make peace apart from England, and to persuade Louis XIV. to acknowledge Anne and the Protestant succession.²¹ The English govern-

¹⁶ Van der Dussen's letter was as follows: "M. le comte de Bergeyck saura, s'il lui plaît, qu'à moins qu'on fasse les mêmes offres qu'on a faites ci-devant des Espagnes, des Indes, du Milanais et du Pays-Bas espagnol, et ce qui a été ajouté, comme aussi un traité favorable de commerce, on ne peut parler confidentiellement sur les autres articles préliminaires." Legrelle, *op. cit.*, V. 437. Louis XIV. wrote Rouillé that the condition of "ce qui a été ajouté" to the Spanish Netherlands referred to the proposals made on his part in 1706, and included only Ypres and Menin. Torcy, *op. cit.*, p. 586; cf. also *Recueil des Instructions*, *op. cit.*, II. 206.

¹⁷ Legrelle, *op. cit.*, V. 430.

¹⁸ Torcy, *op. cit.*, p. 557.

¹⁹ F. Taylor, *Wars of Marlborough, 1702-1709* (1921), II. 302-311.

²⁰ Coxe, *Memoirs of Marlborough* (Bohn's ed.), II. 394, 395.

²¹ In the Dutch project see Taylor, *op. cit.*, II. 314 ff. The texts of the Barrier treaty and of the articles of the English counter-project, struck out or altered by the Dutch, are in Jonathan Swift, *Some Remarks on the Barrier Treaty*.

ment's very different counter-project included two additional articles, of which article 20 bound the maritime powers not to make peace with France until she conceded as preliminaries the restitution of the entire monarchy of Spain and the demolition of Dunkirk.²²

To continue negotiations for the Barrier treaty and adjust other matters relating to a general peace Viscount Townshend was appointed ambassador extraordinary and plenipotentiary to the States General conjointly with Marlborough. Their instructions,²³ dated May 2/13, 1709, directed them to make known to the French that there would be no cessation of arms until the allies were fully satisfied that the preliminaries, if agreed to by France, would be executed. They were to work for the renewal of a grand alliance with mutual guaranties, prior to the conclusion of a general peace; for the restoration of French Protestants to their religious and civil rights; and for a commercial treaty with France. As a preliminary additional to those mentioned in Marlborough's instructions of the preceding April, or in the project of the Barrier treaty, they were to demand the "restoration" of Newfoundland and Hudson Bay.

Upon returning to the Hague on May 18 the two Englishmen, as well as Prince Eugene on behalf of the Emperor, at once joined the conferences already in progress between Heinsius and the French plenipotentiaries, Rouillé and his newly appointed illustrious colleague, the Marquis de Torcy.²⁴

²² The twentieth article of the counter-project is as follows: "And whereas, by the fifth and ninth articles of the alliance between the Emperor, the late King of Great Britain, and the States General, concluded the 7th of September, 1701, it is agreed and stipulated that the kingdoms of Naples and Sicily, with all the dependencies of the crown of Spain in Italy, shall be recovered from the possession of France, as being of the last consequence to the trade of both nations, as well as the Spanish Netherlands, for a barrier for the States General; therefore the said Queen of Great Britain and the States General agree, and oblige themselves, not to enter into any negotiation or treaty of peace with France before the restitution of the said kingdoms of Naples and Sicily, with all the dependencies of the crown of Spain in Italy, as well as the Spanish Low Countries, with the other towns and places in the possession of France above-mentioned in this treaty, and also after the manner specified in this treaty, as likewise all the rest of the entire monarchy of Spain, be yielded by France as a preliminary." The other additional article, the twenty-second, concerned the demolition of Dunkirk.

²³ *British Diplomatic Instructions, 1689-1789*, II. *France, 1689-1721* (ed. L. G. Wickham Legg, for the Royal Hist. Soc., 1925), pp. 9-11.

²⁴ On the negotiations at the Hague in the first half of the year 1709 see Torcy, *op. cit.*, pp. 556-635; Legrelle, *op. cit.* (second ed.), V. 442-500; *Recueil des Instructions*, *op. cit.*, II. 178-235, 232-240; G. de Lamberty, *Mémoires pour servir à l'Histoire du XVIII^e Siècle*, V. 263 ff.; Baron de Girardot, *op. cit.*, I. 28 ff., II. 138-154, *passim*; *British Diplomatic Instructions, France*, *op. cit.*, pp. 8-23; G. Murray, *Letters and Dispatches of Marlborough* (1845), IV. 471-505; Hist. MSS. Comm., *Fourteenth Report* app., pt. IX., MSS. *Earl of Buckinghamshire*, etc. (1895), Hare MSS., pp. 222-224, Round MSS., pp. 338 ff. (Marlborough MSS. for 1709 are listed in the *Eighth Report*, app., pt. I., pp. 36 ff., and Townshend MSS. in the *Eleventh Report*, app., pt. IV., pp. 48 ff.); Sicco van Goslinga, *Mémoires relatifs à la Guerre de Succession de 1706-1709 et 1711* (pub. by U. A. Evertz and G. H. M. Delprat for the Provincial Friesch Genootschap ter Beoefning der Friesche Geschied., Oudheid-, en Taalkunde, Leeuwarden, 1857), pp. 98 ff.; Coxé, *ed. cit.*, II. 385-410; F. Taylor, *op. cit.*, II. 301-341; O. Klopp, *Fall des Hauses Stuart*, XIII. 215-244; C. von Noorden, *Europäische Geschichte im Achtzehnten Jahrhundert* (1882), III. 475-509; I. S. Leadam, *History of England, 1702-1760*, pp. 146-149.

The allies' representatives felt confident of attaining their ends, believing that in view of the misery of the French people Louis XIV. would make almost any sacrifice to preclude the opening of the spring campaign.²⁵ After several days of heated discussion Heinsius, at the request of Torcy, and in concert with Marlborough, Prince Eugene, and the latter's lately arrived colleague Sinzendorf, drew up a project of forty articles to serve as a basis for the general peace.²⁶ Somewhat modified in accordance with a few of the

²⁵ Marlborough to Secretary Boyle, Apr. 12, 1709, in Murray, *Letters and Dispatches*, IV. 476. J. Laws wrote to Sunderland from the Hague, May 29, 1709: "However advantageous and glorious these conditions appear in relation to the allies, 'tis certainly believed, the present miseries and the general discontent of the people will oblige that court to a ready compliance with those demands". P. R. O., St. Pap. For., Holland, no. 233.

²⁶ The articles as drawn up by the representatives of the allies, the observations of the French plenipotentiaries upon them, and the articles as finally settled are all printed in Torcy, *op. cit.*, pp. 619-627. They are printed, as signed, in Lamberty, *op. cit.*, V. 288-295. Some of the more important articles, from the point of view of this volume, are printed below in their final form:

"3. Premièrement, en consideration, et en conséquence de la dite bonne paix, et reunion sincere de toutes parts, Le Roy tres-Christien reconnoitra dès a present publiquement et authentiquement, comme aussy apres dans les traittez de paix a faire, le Roy Charles Trois, en qualité de Roy d'Espagne, des Indes, de Naples, et de Sicile, et generalement de tous les etats dependants, et compris sous le nom de la Monarchie d'Espagne, en quelque partie du monde qu'ils soient situés, à la reserve de ce qui doit être donné à la couronne de Portugal, et au Duc de Savoye, suivant les traittez faits entre les hauts allies, et de la Barriere que le dit Roy Charles Trois doit faire tenir aux dits Seigneurs Estats Generaux des Provinces Unies, dans Les Pais Bas, selon la teneur de la Grande Alliance de l'année 1701 et de ce qui sera dit cy-apres du Haut Quartier de Gueldres, et des conventions à faire avec le dit Roy Charles Trois, sans en rien excepter d'avantage; ainsi et avec tous les droits que le feu Roy d'Espagne Charles 2^e l'a possédé, ou dû posséder, tant pour luy que pour ses hoirs, heritiers, et successeurs, selon la disposition testamentaire de Philippe Quatre, et les pactes etablis et receus dans la Serenissime Maison d'Autriche."

4. 5. [The Duke of Anjou (Philip V.) to retire from Spain, and King Louis to withdraw all his troops from Spain or any Spanish possessions.]

"6. La monarchie d'Espagne demeurera en son entier dans la Maison d'Autriche de la maniere qu'il a été dit cy dessus, sans qu'aucune de ses parties puisse jamais en être demembrée, ni la dite monarchie en tout, ni en partie, être unie a celle de France, ni qu'un seul et mesme Roy ni un Prince de la Maison de France, en devint le souverain de quelque maniere que ce soit par testament, appel, succession, conventions matrimoniales, dons, ventes, contracts, ou autres voyes, telles qu'elles puissent estre, ni que le prince qui regnera en France, ni un prince de la Maison de France puisse jamais regner aussy en Espagne, ni acquerir dans l'étendue de la dite monarchie aucune villes, forts, places ou pais, dans aucune partie d'y celle, principalement dans les Pais-Bas, en vertu d'aucuns dons, vente, échange, conventions matrimoniales, heredité, appel, succession, par testament, ou abintestato, en quelque sorte et maniere que ce puisse estre, tant pour luy que pour les princes ses enfans, et freres leurs heritiers et descendans.

"7. Specialement que la France ne pourra jamais se rendre maitre des Indes Espagnoles, ni envoyer des vaisseaux pour y exercer le commerce, sous quelque pretexte que ce soit. . . .

"16. Le Roy Tres Christien cedera a la couronne de la Grande Bretagne, ce que la France possède dans l'Isle de Terrenouffe, et on restituera de la part de la Reine de la Grande Bretagne, aussy bien que de la part de la Majesté Tres Chrétienne tous les pais, isles, forteresses, et colonies que les armes de l'un et autre coté ont occupées depuis la presente guerre, en quelque lieu des Indes qu'elles soient situées. . . .

"33. La negociation generale se terminera s'il est possible dans le temps de deux mois comme cy dessus.

"34. Et a fin que la dite negociation se puisse tant mieux faire dans le terme desdits deux mois, et que sur l'execution desdits articles, la paix s'en puisse suivre immediatement, il a esté accordé qu'il y aura une cessation d'armes entre les armées de tous les hauts

"observations" made upon it by the French plenipotentiaries, it was signed on May 28 by the representatives of the three allies. It stipulated that the King of France should recognize Charles III. as King of Spain, the Indies, and the rest of the Spanish monarchy, excepting certain districts assigned to other of the allies; that within a two-months' term (June 1 to August 1, 1709), allowed for concluding the peace treaties, Louis XIV. should bring about the restoration of Sicily to Charles III., and should also concert measures with the allies to effect Philip V.'s retirement from Spain, in case of Philip's refusal (art. 4); that Louis XIV. should withdraw his troops and officers from Spanish European territories within the two-months' period, and from Spanish America as soon as possible; and that the Spanish monarchy, in whole or in part, should never be united to France or ruled by a Bourbon prince. The seventh article, as first drafted, was as follows: "*Spécialement que la France ne pourra jamais se rendre maîtresse des Indes espagnoles, ni envoyer des vaisseaux pour y exercer le commerce, directement ou indirectement, sous quelque prétexte que ce soit.*" The French plenipotentiaries objected to the prohibition of the indirect commerce of France with the Indies, on the ground that the Spaniards had always in practice allowed it, since they could not do without French goods. They declared that the trade to the Indies should be on the same footing as in the time of the late Charles II. of Spain. In view of their objection the words "*directement ou indirectement*" were dropped in the revised draft. Articles 8 to 12 were concerned with Imperial rights, and provided for the surrender of Alsatian towns and the demolition of Rhenish fortresses by France. Articles 14 to 19, dealing with England's interests, stipulated the acknowledgment of Queen Anne and the Protestant succession by Louis XIV.; the cession to Great Britain of France's possessions in Newfoundland, and the mutual restitution of American territories occupied by the arms of France or England during the present war (art. 16); the demolition of Dunkirk; the Pretender's retirement from France; and negotiations for an Anglo-French commercial treaty. The sixteenth article was agreed to by the French plenipotentiaries on the understanding that the restitution of Newfoundland should be made on conditions to be settled at the time of concluding the general treaty of peace.²⁷ Articles 20 and 21 provided for the interests of Portugal and

partis qui sont en guerre a commencer par tout, lors que la conclusion des dits articles pourra venir a la connoissance des dits hauts partis presentement en guerre. . . .

"36. Sa Majesté Tres Chretienne promet de même au tems de ladite conclusion, et devant l'expiration des deux mois apres, d'exécuter tout ce qui a esté accordé cy devant à l'égard des autres alliez.

"37. Et en cas que le Roy Tres Chretien exécute tout ce qui a été dit cy dessus et que toute la Monarchie d'Espagne soit renduë et cedée audit Roy Charles Trois comme est accordé par ces articles dans le terme stipulé; on a accordé que la cessation d'armes entre les armées des hauts partis en guerre continuera jusques à la conclusion et la ratification des traittez de paix a faire." P. R. O., St. Pap. For., Treaties, no. 135.

²⁷ The English ministers wrote to Secretary Boyle on May 21 that Torcy "made difficulty upon our demands of Newfoundland, as not being instructed, but at last agreed on condition we restore what we may have taken from them during this warr in the West Indies". P. R. O., St. Pap. For., Holland, no. 233. Boyle replied that hitherto the English had not been very fortunate in those parts, but that if the present expedition

Prussia, respectively; articles 22 to 25, for those of the States General, to whom Louis XIV. was to yield barrier towns and forts as well as advantages for their trade with France. Subsequent articles stipulated concessions to Hanover and Savoy; reference of the demands of the former electors of Cologne and Bavaria to the general peace negotiations; liberty for the allies to put forward "ulterior demands" in the general congress; suspension of hostilities as soon as the conclusion of the preliminary articles should come to the knowledge of the belligerent parties; the evacuation by France of certain towns in the Low Countries, to begin immediately upon the conclusion and ratification of the said articles; and the execution of the other stipulations within the two-months' period. If Louis XIV. executed all the provisions of the treaty, and if the whole Spanish monarchy were delivered up to Charles III. within the limited term, then, and only then, would the armistice continue until the definitive treaties were concluded (art. 37). To accelerate the conclusion of the treaties a congress was to begin on June 15, at the Hague (art. 40).

The restitution of Hudson Bay was not provided for in the preliminaries. Contrary to the queen's wishes²⁸ the English plenipotentiaries agreed to refer to commissioners the whole matter, including indemnification of the queen's subjects for damages suffered in the Hudson Bay region.²⁹

to the West Indies were successful the queen would very unwillingly consent to forego the advantages. *Br. Dipl. Inst.*, II. *France, 1689-1721*, pp. 12, 13. The sixteenth article gratified the English merchants. William Churchill, writing to Marlborough on May 20/31, declared, "Your Grace having got all Newfoundland to be restored to us, gives an unspeakable joy to all the substantial and reputable people of trade and commerce, from Southampton round the Land's End to Bristol, and in my poor opinion will make and keep you more real friends than Bank and both India Companies put together". British Museum, Coxe Papers, XXVIII., Add. MSS. 9105. Godolphin, a few days later, informed the Duke that "the article of Newfoundland is extremely pleasing here". *Ibid.*

²⁸ *Br. Dipl. Inst.*, II. 13.

²⁹ According to Torcy the English plenipotentiaries said that they had orders to demand that upon the conclusion of peace, commissioners should be named to finish the affair of Hudson Bay, and the French consented to it. Torcy, *op. cit.*, p. 608. As early as May 19 Marlborough wrote Godolphin that "the pretensions of Hudson's Bay must be adjusted by Commissioners". Coxe Papers, XXVIII., Add. MSS. 9105. Two days later he and Townshend wrote to Boyle, "As to Hudson's Bay it was thought most natural to be referred to the General Treaty, and that being chiefly a matter of accounts, the Comissioners on both sides might take it up where they left it off last". St. Pap. For., Holland, no. 233. But on June 4, after they knew of the queen's opposition to such postponement, they affirmed that they had insisted on both the restitution of the country and indemnification until the Imperial and Dutch ministers desired them to waive the matter for the present and accept the French offer of referring it to commissioners. *Ibid.*

A letter written by William Penn to Marlborough from Bristol, on May 22, 1709, O. S., seems to the editor of sufficient intrinsic interest to warrant its reproduction here, even though it did not affect the course of these and the subsequent Anglo-French negotiations:

"My noble friend. I hope my last came time enough for the peace especially, since all our news made us believe there would be none this year; but to day's prints speaking so very favourably of it, I send this in reference to our North bounds in America.

"The English empire on the continent lyes upon the South side, and we clayme to the North [side] of Hudson's Bay; but I should be glad that our North bounds might be exprest and allowed to the south side of St. Lawrence's river that feeds Canada Eastwards and comes from the Lakes westward which will make a glorious end from these lakes, due west to the river of Messissipi and tracers that river to the extream bounds of the continent westwards, whereby we may secure a 1000 miles of that river down to the bay of Mexico and that the French demolish or at least quill all their settlements within the

The preliminary articles were signed on May 28 and 29 by the representatives of the Emperor, Great Britain, and the United Provinces.³⁰ Louis XIV., on the other hand, knowing that he could not bring about the cession of the entire Spanish monarchy to Charles III. within the two-months' term, as stipulated by the fourth and thirty-seventh articles, refused to sign, and revoked all his offers to the allies.³¹

The desperate situation of French affairs soon drove Louis XIV. to further efforts for peace. Through conferences held mainly at Gertruydenberg from March to July, 1710, between his two plenipotentiaries, Marshal d'Huxelles and the Abbé Polignac, and the Dutch deputies, Buys and Van der Dussen, he proposed various expedients for settling the question of the cession of the Spanish monarchy, even offering to pay subsidies to the allies to help them carry on the war against Philip V. in Spain. But he would not consent to the final, impracticable demand of the Dutch—that he should undertake either to persuade Philip V., or to compel him by means of only his own forces (unless, perhaps, the allies' troops in Catalonia and Portugal gave them aid), to renounce the whole Spanish monarchy, and within the space of two months put Charles III. in possession of Spain and Spanish America.³²

The ministerial changes in England in the summer and autumn of 1710 brought the Tories into power, under the leadership of Robert Harley, who, as well as the tax-burdened English people, felt the need of peace.³³ The chief obstacle to peace was removed by Philip V.'s victories in Spain, in December, 1710, which demonstrated the futility of supporting any longer the claims of Charles III. to Spain and the Indies.³⁴

On December 23, 1710, Gaultier, a French priest, long resident in England, a pensionary of Louis XIV.,³⁵ in frequent correspondence with Torcy³⁶

bounds aforesayde. The duke may find at any noted stationers in Holland or Flanders the map of North America, and see how St. Laurence river runs east and west through the length of the continent and that of Mississippi which lyes 2000 miles cross the continent North and South: for without such a settlement of our American bounds we shall be in hazard of being dangerously surprised by the French and their Indians, especially if they send but 12 ships of war to attaque us by sea. I humbly refer it all to the Duke's English heart and head to secure to his country so great an one and of that value on many accounts (and no more I think than we have a real claim to)." British Museum, Coxe Papers, XXVIII., Add. MSS. 9105.

³⁰ John Laws, writing to Sunderland from the Hague on May 29, states that the articles were signed on May 28 by the several deputies of the United Provinces, and on May 29 by Prince Eugene and Count Sinzendorf, and by Marlborough and Townshend. P. R. O., St. Pap. For., Holland, no. 233.

³¹ Torcy, *op. cit.*, pp. 627-630; *Recueil des Instructions*, *op. cit.*, II. 233 ff.

³² Torcy, *op. cit.*, pp. 656-658; *Recueil des Instructions*, *op. cit.*, II. 230, 231; *Journal Inédit de Jean-Baptiste Colbert, Marquis de Torcy*, pp. 213-230, *passim*; Legrelle, *op. cit.*, V. 542 ff.

³³ Harley to Newcastle, Aug. 10 (or 5), 1710. *MSS. of the Duke of Portland*, II. 213; Drummond to Harley, Dec. 15, 1710, *ibid.*, IV. 639.

³⁴ As early as Nov. 17 (28), 1710, Saint John wrote to Drummond, "Our news from Spain all manner of ways is bad, and promises being worse". Parke, *Letters of Bolingbroke*, I. 22. Torcy, who informed Louis XIV. on Dec. 19 of the battle of Brihuega, learned of the battle of Villaviciosa on the following day. *Journal Inédit*, pp. 319 (note 1), 320 (note 1).

³⁵ *Ibid.*, p. 347, note 3.

³⁶ Extracts from several letters written by him to Torcy in 1710 are printed in Legrelle, *ed. cit.*, tom VI., ch. I., and in Weber, *Der Friede von Utrecht*, kap. I., foot-notes.

and in touch with the Earl of Jersey, the Duke of Shrewsbury, and Harley, informed Torcy that the English court would no longer insist on the entire restitution of the Spanish monarchy to the house of Austria, except perhaps feebly, and *pro forma*,³⁷ but would be satisfied if France and Spain would give them good securities for English trade.³⁸

Speaking for these statesmen with Torcy at Versailles on January 21, 1711, Gaultier affirmed that they were resolved to work for a peace, and that they desired France to reopen conferences with the Dutch and afterwards enter into separate and secret negotiations with themselves. In view of his humiliation at Gertruydenberg Louis XIV. refused to address himself to the Dutch, but expressed an inclination to treat with Great Britain.³⁹ Thereupon the Tory leaders, wishing to conceal from their countrymen as well as from their allies their overtures to France, asked that France should offer general terms of peace which they would lay before the Dutch.⁴⁰ Six articles, closely conforming to the English proposals verbally communicated by Gaultier, were signed by Torcy on April 22, and laid down the following bases for a peace: (1) real securities for British trade in Spain, the Indies, and the Mediterranean; (2) for the Dutch, a barrier in the Low Countries sufficient for their security and agreeable to England, and security for their commerce; (3) for the other allies, reasonable satisfaction; (4) a settlement of the dispute about the Spanish monarchy, with security for the trade and interests of all the belligerents; (5) the immediate opening of conferences to treat for peace on these conditions; (6) Aix-la-Chapelle or Liège as the place for a general peace conference.⁴¹

Through the British ambassador at the Hague, Lord Raby, afterwards Lord Strafford, these articles were transmitted to Heinsius and Buys,⁴² who regarded them as "very dark and general", and hoped that England would make France explain them.⁴³ A recent change in the international situation tended to reconcile the Dutch, as well as the English, to conceding Spain and the Indies to Philip V.; for on April 17 the Emperor had died, leaving Charles III. as heir to his Austrian dominions and his probable successor to the Imperial crown. Under these circumstances Charles III.'s sovereignty over Spain and the Indies would endanger the balance of power as much as their retention by a Bourbon prince.⁴⁴

³⁷ Weber, *op. cit.*, p. 18, note 1; cf. also *ibid.*, p. 16, note 1.

³⁸ *Journal Inédit*, pp. 348 ff.; Torcy, *Mémoires*, p. 666.

³⁹ *Journal Inédit*, pp. 357-360.

⁴⁰ *Ibid.*, pp. 387, 392, 396, 404, 426, 427; Torcy, *Mémoires*, pp. 667, 668; Weber, *op. cit.*, pp. 24-33; Legrelle, *ed. cit.*, VI. 22-24.

⁴¹ The proposals, signed by Torcy, are in the P. R. O., St. Pap. For., France, no. 154. They are printed in Parke, *op. cit.*, I. 172 n.; and in English in the "Report from the Committee on the Negotiations" in Cobbett's *Parl. Hist.*, vol. VII., cols. ciii, civ, and in Swift's *History of the Four Last Years of the Queen*. The French text given in Lamberty, *op. cit.*, VI. 669, 670, differs verbally from that in Parke.

⁴² Parke, *op. cit.*, I. 172 ff.

⁴³ *Ibid.*, p. 198 n.; "Report", *loc. cit.*, col. iii.

⁴⁴ Torcy told Prior on July 22, 1711, that the Dutch wished to treat with France on the basis of leaving Philip V. on the Spanish throne. *Eng. Hist. Rev.*, XXIX. (1914) 528.

The English as well as the Dutch desired an elucidation of the six articles.⁴⁵ To obtain this Matthew Prior was dispatched to France, instructed and empowered simply "to communicate to France our preliminary demands and bring us back an answer".⁴⁶

Before Great Britain would enter into any peace negotiations she required assurance that the union of the crowns of France and Spain would be prevented. Her particular demands for herself—not those for her allies—will alone be stated here.⁴⁷ From France, she asked for recognition of the order of succession to the British crown as at present established, a new treaty of commerce, and the demolition of Dunkirk. From Spain, she required liberty to retain two of her conquests, Gibraltar and Port Mahon; an *assiento* like that possessed by the French Guinea Company; ⁴⁸ the assignment to those concerned in this trade of places in Spanish America suitable for the refreshment and sale of their negroes; the advantages of the most-favored nation, including France; possession of places (to be named in the peace treaty) desired for the better protection of British trade in Spanish America. In regard to French America, she demanded the entire restoration of Newfoundland, of Hudson Bay and Strait; and the retention by Great Britain and France respectively of all North American territory possessed by each at the time of the publication of the ratification of the treaty in those parts. These demands and all other proceedings between Great Britain and France were to be kept secret until divulged by mutual consent.

The demands regarding the Spanish Indies were peculiarly important to the English ministry, and especially embarrassing to Louis XIV. Both Harley, created Earl of Oxford and Mortimer on May 23, 1711, and St. John, secretary of state, and recently initiated into a knowledge of the clandestine negotiations with France, were bent on promoting British trade in the Pacific.⁴⁹

Harley's scheme for a South Sea Company had been embodied in a bill which received the royal assent on June 12/23, 1711.⁵⁰ The acquisition of places in Spanish America was essential to the company's success. Prior argued that such places had been virtually promised by the first of the six articles, under the name of "real securities" for trade in the Indies; and were needed to store merchandise, and for retreat from pirates.⁵¹ He asked

⁴⁵ Parke, *op. cit.*, I. 178 n.

⁴⁶ His instructions are printed in *Br. Dipl. Inst.*, II. *France*, p. 24, and in many other places.

⁴⁷ French and English texts of the demands are in P. R. O., St. Pap. For., Treaty Papers, no. 15. The French text is printed in Legrelle, *ed. cit.*, VI. 30, 31. Another somewhat different text of the demands is in St. Pap. For., no. 258, and is printed in "Report", *loc. cit.*, cols. civ, cv, and, in French, in Lamberty, *op. cit.*, VI. 676. The demands form part of the Text printed below, pp. 147-150.

⁴⁸ For the French *assiento* of 1701 see above, Doc. 89.

⁴⁹ For Bolingbroke's interest in the matter see Parke, *op. cit.*, vol. I. pp. 36n., 40n.

⁵⁰ *Journals of the House of Commons*, XVI. 692. The act 9 Anne c. 21, "for making good deficiencies, and satisfying the public debts; and for erecting a corporation to carry on a trade to the South Seas", etc., is in D. Pickering's *Statutes at Large*, XII. 192 ff.

⁵¹ For the conferences between Torcy and Prior see the former's account in *Eng. Hist. Rev.*, XXIX. (1914) 525-532, and in his *Memoirs*, *ed. cit.*, pp. 669-672; and the latter's account in *Hist. MSS. Comm.*, *MSS. of the Duke of Portland*, V. 34-42.

for two places in the North and two in the South. Torcy declared that other nations, particularly the Dutch, would oppose this acquisition, or make like claims; that the English would fortify any places given them, as they had done in the East, and that they wished to make themselves masters of the whole trade of the world. The matter was disputed at length. Prior said that Great Britain also desired particular advantages in regard to Spanish-American trade to enable her to repay her huge war debts. She should have as great privileges from Philip V. as Charles III. had promised her.⁵² The demand for places in Spanish America was embarrassing. Anticipating such a claim, Louis XIV. had already tried to persuade his grandson for the sake of peace to accord it; but Philip V., while agreeing to yield Gibraltar and Port Mahon, had positively declined to "hazard the Indies" by surrendering any American port to the British.⁵³ On the other hand, Prior declared that without such a concession peace could not be made. Since Prior was not empowered to treat, and pressed for an answer, Louis XIV. resolved to send Mesnager to England with him, to conclude an agreement there.

Mesnager was, of course, deeply versed in Spanish-American trade. At the king's command he had, on July 28, presented a memoir on the subject,⁵⁴ which considerably resembled the plans that he had advocated at Madrid in 1706 and 1708.⁵⁵ His latest plan provided for the exclusion of all foreigners from direct access to the Indies; liberty for them to send their goods thither in Spanish ships, unlimited in number and sailing from Cadiz; regulation and modification of Spanish import and export duties; liberty to export abroad precious metals brought to Cadiz; free entry of European goods into Cadiz, where foreigners might reside and engage in commerce with the same freedom as Spaniards, where there would be a tribunal of commerce, composed of foreigners, and where a Swiss garrison would be installed to watch over the trade to the Indies.⁵⁶ Mesnager was instructed to offer his plan to the British as the most suitable for all the nations of Europe, to whom it would ensure equal treatment.⁵⁷ Since the British would wish some particular advantages in the American trade, he was to accord, as an equivalent for places in the Indies, not only exemption from customs duties in Spanish ports, with free entry thereto, but also, for goods of British growth and manufacture in the Indies, exemption from all duties and impositions. Porto Rico or Trinidad might be given as a further equivalent, if the King

⁵² The separate article of the Anglo-Spanish treaty, conceding privileges in Spanish-American trade, is printed above, Doc. 95. Prior did not mention that a main object of this treaty was to exclude the French forever from Spanish America.

⁵³ *Journal Inédit*, pp. 441, 442; Abbé Millot, *Mémoires de Noailles*, p. 243; Baudrillart, *op. cit.*, I. 434, 435; Scelle, *op. cit.*, II. 489-491.

⁵⁴ For an account of Mesnager's plan of July, 1711, see Dahlgren, *op. cit.*, pp. 629 ff.

⁵⁵ *Ibid.*, pp. 343 ff., 515 ff.

⁵⁶ According to Mesnager, "Le motif principal des Anglais et des Hollandais pour s'armer contre la France et l'Espagne est fondé sur la crainte de voir passer immédiatement les richesses de l'Amérique entre les mains du Roi et du roi d'Espagne comme une source de bien inépuisable pour faire la guerre à tout l'Europe et la conquête universelle." *Ibid.*, p. 633.

⁵⁷ *Ibid.*, p. 637.

of Spain consented.⁵⁸ The *assiento*, together with places of refreshment for the slaves, enjoyment in Spain of the advantages of the most favored nation, and Gibraltar, might all be offered. Port Mahon should be reserved to bargain with. Regarding matters primarily of French interest, he was to concede the recognition of Queen Anne and the established order of succession; a new treaty of commerce; if necessary to peace, Newfoundland, including Placentia, with three reservations: (1) that the French might continue to catch codfish and dry them as heretofore in the part of Newfoundland called "little North", (2) that the English should abandon all pretension to the islands of Cape Breton, St. Pierre and Sainte Marie, (3) that Port Royal and whatever depended on Acadia should be restored to France, as well as Quebec, if that should be conquered, or any portion of Canada. The demolition of the fortresses and harbor of Dunkirk should be discussed last of all, and if it had to be granted, an equivalent should be obtained.⁵⁹

Mesnager's instructions dealt also with the terms to be conceded to the allies of Great Britain, and with the claims of France for herself and her allies.

The French envoy arrived in London on August 18. The commissioners appointed to negotiate with him were Oxford, Shrewsbury, Jersey, who died on September 6, and the two secretaries of state, St. John and Dartmouth. Prior also attended the conferences, in which St. John played the leading rôle.⁶⁰ At the first conference, on August 26, the British insisted that only their own interests, and not those of their allies or France, were to be discussed. Later they virtually abandoned their claim to places to be held as "real securities" for their trade in Spanish America, demanding as compensation: (1) the exemption from customs duties, offered by Mesnager, and rated by him as amounting to a profit of fifteen per cent. on merchandise of the growth and manufacture of Great Britain; (2) the concession of the *assiento* for thirty years instead of for the ten-year period accorded in 1701 to the French; (3) the whole island of St. Christopher; and (4) a district on the Rio de la Plata for the refreshment and sale of their negroes.⁶¹ These new demands as well as those for recognition of the succession to the British crown as then established; a treaty of commerce; the demolition of Dunkirk; the cession of Gibraltar, Port Mahon, Newfoundland, and Hudson Bay and Strait, and the retention by both parties of lands possessed by them in North America at the time of the publication of the treaty in those parts of the world, were, in the form of eight articles, to be taken by Gaultier to Versailles. On September 27,⁶² the Abbé returned to London, with (1) the answers of France to the articles; (2) new full powers for Mesnager author-

⁵⁸ Dahlgren, *op. cit.*, p. 638.

⁵⁹ On Mesnager's instructions see Torcy, *Mémoires*, *ed. cit.*, pp. 672 ff.; Weber, *op. cit.*, pp. 45 ff.; Legrelle, *ed. cit.*, VI. 32 ff.; Scelle, *op. cit.*, II. 498 ff.; Dahlgren, *op. cit.*, 636 ff.

⁶⁰ Torcy, *ed. cit.*, pp. 676, 680.

⁶¹ *Ibid.*, pp. 676, 677; Scelle, *op. cit.*, II. 513-516; Legrelle, *ed. cit.*, p. 39.

⁶² Torcy states that Gaultier returned on Sept. 23, but *cf.* Legrelle, *ed. cit.*, p. 45, note 4, and Weber, *op. cit.*, p. 54.

izing him to put into writing and sign the said answers, which the King of France would regard as conditions to be granted in case the treaty of general peace were signed; (3) a *projet* of general proposals from France to her enemies, to be sent to the United Netherlands by the queen.

Only the answer to the eighth article, concerning North America, presented difficulties. While agreeing to cede Newfoundland, Louis XIV. insisted that his subjects might continue to catch and dry codfish in the "little North", that the British should renounce Cape Breton, St. Pierre and Sainte Marie; restore Port Royal and all the dependencies of Acadia, and, in case their expedition sent under Brigadier-General John Hill against Quebec succeeded, restore that town and Canada. On the other hand, the King of France agreed to give up Hudson Bay and Strait, and empowered Mesnager to have all discussions concerning North America referred to the general peace negotiations.⁶³

The British ministers objected to these innovations, and claimed indemnification for the expenses of the Canadian expedition.⁶⁴ Uninstructed on the last point, Mesnager could not accord it. He insisted on the reservation respecting the Newfoundland fishery, which was finally conceded.⁶⁵ Both sides agreed that the discussion of the other difficulties in the eight articles should be referred to the peace congress.

Although on September 20/October 1 a royal warrant (antedated Sept. 17) was drawn up, for affixing the great seal to a commission empowering nine plenipotentiaries (Harcourt, Oxford, Buckinghamshire, the Bishop of Bristol, Shrewsbury, Poulett, Dartmouth, St. John, and Prior) "to conclude and sign a conditional, or eventual treaty" with Mesnager, this warrant was not used.⁶⁶ The preliminary articles, printed below, were signed on September 27/October 8, by Mesnager, and on behalf of England by Dartmouth and St. John, who had been empowered therefor by a warrant, signed by the queen two days earlier.⁶⁷ At the same time two other instruments were signed—a separate article relating to the Duke of Savoy, and the general articles for the allies.⁶⁸

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⁶³ Legrelle, *ed cit.*, VI. 40. 41. Since the expedition failed, the question of restoring Quebec did not trouble the later conferences.

⁶⁴ Torcy, *ed. cit.*, p. 679.

⁶⁵ *Ibid.*, pp. 681, 682.

⁶⁶ The warrant is printed in "Report from the Committee on the Negotiations" in Cobbett, *op. cit.*, cols. cx, cxi.

⁶⁷ The warrant for the two secretaries of state is printed *ibid.*, col. cxii.

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TEXT.⁶⁹

Reponse de la France aux demandes preliminaires pour la Grande Bretagne plus particulierement.

Le Roy estant particulierement informé par le dernier memoire que les ministres de la Grande Bretagne ont remis au Sieur Mesnager des dispositions de cette couronne à faciliter la paix generale à la satisfaction de toutes les parties interessées dans la presente guerre, et sa Majesté voyant effectivement, ainsi que le porte ce même memoire, qu'elle ne risque rien en s'engageant de la maniere qu'il y est exprimé, puisque les articles preliminaires n'auront aucun effet avant la signature de la paix generale, desirant d'ailleurs tres sincerement de faire tout ce qui est en son pouvoir pour avancer le retablissement du repos de l'Europe, principalement par une voye aussi agreable à sa Majesté que le sera l'entremise d'une princesse que tant de liaisons du sang doivent unir avec elle, et dont les sentimens pour la tranquillité publique ne sçauroient estre douteux, sa Majesté, touchée par ces considerations, a ordonné au Sieur Mesnager, chevalier de son Ordre de St. Michel, député au conseil de commerce, de faire par écrit les responses suivantes aux articles contenus dans le memoire qui luy a esté remis, et qui sont intitulés *Demandes preliminaires pour la Grande Bretagne plus particulierement.*

Reponses du Roy.

Demandes preliminaires pour la Grande Bretagne plus particuliere-ment.

1^r Article.

Sa Majesté reconnoitra la Reine de la Grande Bretagne en cette qualité, aussi bien que la succession à cette couronne suivant l'establissement present.

2. Le Roy consent à faire un nouveau traité de commerce avec la Grande Bretagne de la maniere la plus juste, la plus raisonnable, et la plus avantageuse à la France et à la Grande Bretagne.

1^r Article.

La succession à la couronne de ces royaumes selon l'establissement present sera reconnue.

2. Un nouveau traité de commerce entre la Grande Bretagne et la France sera fait de la maniere la plus juste et raisonnable.

⁶⁹ The text is from the original, preserved in the P. R. O., St. Pap. For., Treaty Papers, no. 15.

3. Quoique Dunquerque ait coûté au Roy des sommes tres grandes tant pour l'acquerir, que pour le fortifier ; et qu'il soit necessaire de faire encore une depense très considerable pour en raser les ouvrages, sa Majesté veut bien toutesfois s'engager à les faire demolir immediatement apres la conclusion de la paix, à condition qu'il luy sera donné pour les fortifications de cette place un equivalent convenable, et dont elle soit contente. Et comme l'Angleterre ne peut fournir le dit equivalent, la discussion en sera remise aux conferences, qui se tiendront pour la negotiation de la paix generale.
4. Le Roy promet au nom du Roy d'Espagne son petit fils, et suivant le pouvoir que sa Majesté en a receu de ce prince, que Gibraltar et le Port Mahon demeureront entre les mains des Anglois, qui possèdent presentement l'un et l'autre.
5. Les Anglois auront apres la paix conclue la traite des negres de Guinée aux Indes Occidentales, autrement le pacte d'Assiento, aux mêmes conditions que cette convention a esté faite par le Roy d'Espagne avec les François, en sorte que la Compagnie qui sera établie pour cet effet en Angleterre aura la prerogative de faire reposer vendre et debiter ses negres dans toutes les places et ports de l'Amerique sur la mer du Nord, dans celui de Buenos Ayres et generalement dans toutes les places et ports dont l'entrée estoit permise aux vaisseaux de la Compagnie formée en France sous le nom de l'Assiento.
6. Le Roy promet pour luy même et pour le Roy d'Espagne suivant le pouvoir qui est entre les mains de sa Majesté, que cet article sera accordé en cas de la conclusion de la paix, comme les precedents, et qu'il sera punctuellement executé.
- 7.
3. Dunquerque sera demoli.
4. Gibraltar et le Port Mahon resteront entre les mains de ceux qui les possèdent presentement.
5. Le pacte d'Assiento sera fait avec les Anglois, de la même maniere que les François le possèdent à present ; et telles places dans l'Amerique Espagnole seront assignées aux interesez dans ce commerce pour le rafraichissement et vente de leurs negres qui seront trouvées necessaires et convenables.
6. Tous les avantages, droits, et privileges qui sont deja accordés, ou qui pouront estre accordés doresnavant par l'Espagne aux sujets de la France, ou de quelque autre nation que ce soit seront pareillement accordés aux sujets de la Grande Bretagne.
7. Et pour mieux proteger le commerce dans l'Amerique Espagnole, on y mettra les Anglois en possession

de telles places, qui seront nommées dans le traité de paix.

La France ayant offert une seureté réelle pour le commerce des sujets de la Reine de la Grande Bretagne dans l'Amerique Espagnole, on n'a jamais douté, qu'elle n'entendit par là des places; et l'on a esté confirmé dans cette opinion, vû qu'elle a proposé Gibraltar comme une seureté pour le commerce d'Espagne et de la Mediterranée, les avantages et les privileges offerts par le Sieur Mesnager ne doivent pas estre regardés comme des seuretés réelles, parce-qu'il sera toujours dans le pouvoir de l'Espagne de les reprendre. C'est pourquoy l'on croit que la France est dans l'obligation ou de faire ceder à la Grande Bretagne les places demandées dans cet article, ou de luy procurer de nouveaux avantages, tels que l'amour de la paix puisse faire accepter comme un equivalent; sur quoy on se trouve obligé d'insister que ce ministre soit muni d'un pouvoir suffisant. Et pour marquer d'autant mieux la sincerité avec laquelle on traite, et le desir que sa Majesté de la Grande Bretagne a d'avancer la paix generale, elle a trouvé à propos de declarer que la difficulté survenue sur cet article pourra estre levée en luy accordant les articles suivantes :

Que le pacte d'Assiento soit fait avec la Grande Bretagne pour le terme de trente ans.

Quoyque le Roy d'Espagne au commencement de son regne fût porté à favoriser la nation François qu'il eust besoin de secours d'argent pour subvenir aux frais d'une guerre imminente; ce prince nonobstant ces considerations n'accorda que pour dix ans aux François le privilege de la traite des negres. Ce seroit beaucoup faire en faveur des Anglois que de laisser pendant vingt ans entre les mains de la nation Angloise une prerogative dont il semble que toutes les nations de l'Europe voudront jouir chacune à leur tour. Toutesfois le Roy promet que le Roy son petit fils laissera aux Anglois pendant trente années consecutives la traite des negres de Guinée aux Indes Occiden-

tales, autrement le pacte d'Assiento aux memes conditions, prerogatives, et privileges accordés à la compagnie François, et dont elle a joui, ou deu jouir depuis le premier May de l'année 1702, jusqu'à à present.

Le Roy accordera cet article.

Sa Majesté promet pareillement au nom du Roy d'Espagne les avantages et exemptions de droits dont il est fait mention dans cet article, et dont les Anglois jouiront immédiatement après la conclusion de la paix à l'eschange des ratifications.

La paix generale estant faite, il sera assigné à la compagnie Angloise de l'Assiento une etendue de terrain dans la riviere de la Plata, sur lequel elle pourra non seulement rafraichir ses negres, mais les garder en seureté jusqu'à ce qu'ils soient vendus, suivant les conditions qui seront stipulées par la convention qui doit estre passée pour l'Assiento. Et pour empêcher qu'il ne soit abusé de cette permission le Roy d'Espagne nommera un officier pour y veiller, à l'inspection du quel les interessés à la dite compagnie, et generalement tous ceux qu'ils employeront pour en faire le service, seront soumis.

8. La discussion de cet article sera remise aux conferences generales de la paix, bien entendu que la faculté de pescher et de secher la morue sur l'isle de Terre-neuve sera reservée aux François.

Que l'isle entiere de St. Christophle soit assurée à la Grande Bretagne.

Que les advantages et exemptions de droits promis par le Sieur Mesnager et qu'il pretend devoir monter à quinze pour cent de profit sur toutes les marchandises du cru et la manufacture de la Grande Bretagne luy soient effectivement accordés.

La Grande Bretagne peut rafraichir à la Jamaïque ses negres, et y faire la distribution de ceux qu'elle envoie à la Vera Cruz, à Portobello, et aux autres comptoirs dans cette partie des Indes. Mais comme du costé de la riviere de Plate elle n'est en possession d'aucune colonie, on demande qu'il luy soit assigné dans cette riviere quelque etendue de terrain, sur lequel elle pourra non seulement rafraichir ses negres, mais les garder en seureté jusqu'à ce qu'ils soient vendus aux Espagnols. Et comme on n'entend aucune finesse en faisant cette demande, on se soumettra à cet égard à l'inspection de l'officier qui sera nommé à cette fin par l'Espagne.

8. La Terre-neuve, la Baye et les Detroits de Hudson seront entierement restitués aux Anglois. La Grande Bretagne et la France garderont et possederont respectivement tous les païs, domaines et territoires dans l'Amerique Septentrionale, que chacune de ces nations possederait au tems que la ratification de ce traité sera publiée dans ces parties du monde.

En execution des ordres du Roy nous soussigné Chevalier de son Ordre de St. Michel, député au Conseil de Commerce, avons arreté les presentes reponses aux demandes preliminaires pour la Grande Bretagne au nombre de huit articles, en vertu du pouvoir de sa Majesté dont nous avons fourni la copie signée de notre main, et promettons au nom de sa dite Majesté que les dites responses seront regardées comme conditions qu'elle convient d'ac-

corder, dont les articles seront redigés dans la forme ordinaire des traittés, et expliqués de la maniere la plus nette et la plus intelligible à la satisfaction commune des couronnes de France, et de la Grande Bretagne; et ce en cas de signature du traitté de la paix generale. En foy de quoy nous avons signé et mis le cachet de nos armes. Fait à Londres le vingt septieme Septembre vieux stile, et du nouveau le huitieme Octobre, mil sept cents onze.

MESNAGER.

Le Roy tres Chretien ayant temoigné à la Reine le desir sincere qu'il a de voir retablir la tranquillité generale de l'Europe par une paix definitive, seure, durable, et convenable aux interets de tous les alliéz, et ayant souhaitté que la Reine voulust avancer la negotiation d'une telle paix, il a esté trouvé juste et raisonnable que les interets de la Grande Bretagne fussent en premier lieu ajustés et assurés. Pour cet effet le Roy tres Chretien ayant envoyé le Sieur Mesnager, chevalier de son Ordre de St. Michel et député au Conseil de Commerce, il a arreté les articles susmentionnés au nombre de huit en vertu du pouvoir de sa Majesté tres Chretienne, dont il nous a fourni la copie signée de sa main; les quels articles nous soussignés declaron en vertu d'un ordre expres de sa Majesté, qu'elle accepte comme articles preliminaires, qui ne contiennent que des seuretez et avantages que sa Majesté se croit en droit d'attendre, quiconque soit le prince qui aura en partage la monarchie d'Espagne. Et ces articles doivent estre regardés comme conditions que sa Majesté tres Chretienne convient d'accorder, les quels articles seront redigés dans la forme ordinaire des traittés, et expliqués de la maniere la plus nette et la plus intelligible à la satisfaction commune des couronnes de la Grande Bretagne et de la France. Et ce seulement en cas de signature de la paix generale. En foy de quoy nous avons signé et mis les cachets de nos armes. Fait à Londres le vingt septieme Septembre vieux stile, et du nouveau le huitieme Octobre, mil sept cents onze.

DARTMOUTH.
ST. JOHN.

M[ATTHEW] P[RIOR] : n. 3.

[For all the negotiations of 1711-1713 leading to the conclusion of peace, the reader should now consult G. M. Trevelyan, *England under Queen Anne*, vol. III., *The Peace and the Protestant Succession* (London, 1934).]

Treaty for suspension of arms, concluded between Great Britain and France at Paris, on August 19, 1712. Ratification by France, August 23, 1712. Separate article signed by the plenipotentiaries of Great Britain and France on August 24, 1712. Prolongation of the suspension of arms, signed by same, at London, November 26/December 7, 1712.

INTRODUCTION.

The seven articles¹ proposed by France and accepted by Great Britain as preliminaries for a general peace satisfied neither the Dutch nor the Imperialists. The Dutch complained of their vagueness,² and were convinced that Great Britain had safeguarded her own interests without due regard to theirs by means of a separate and secret convention with France.³ Parliament's adoption of the South Sea Company project, in May, 1711, had indicated the nature of British aspirations and excited the jealousy of the Dutch.⁴ They now feared that—contrary to a provision of the Barrier treaty of 1709, which promised them commercial privileges in all of the Spanish dominions equal to those of Great Britain or the most-favored nation⁵—the British ministry had secured from France the promise of exclusive advantages in Spanish-American trade, including the *assiento*.⁶

The States General sent Buys to London in October, 1711, to urge the obtaining of more specific preliminaries from France and adequate war preparations, to discuss the Barrier treaty, and to treat for an alliance that should subsist in time of peace as well as of war.⁷ Buys accomplished little. The queen would not concert war plans with the States until they joined with

¹ See above, p. 147.

² Resolutions of the States General, Oct. 24, 1711, in "Report from Committee of Secrecy", app. no. 9; Bolingbroke, *Letters*, I. 430.

³ On Aug. 28/Sept. 8, 1711, J. Drummond wrote to the Earl of Oxford that Buys "thinks you are running away with the trade, and that you are far advanced and keep them in the dark". Hist. MSS. Comm., *Duke of Portland MSS.*, V. 80. Cf. Strafford's instructions of Oct. 1/12, 1711, directing him to assure the Dutch "that we have made no stipulation for ourselves which may clash with the interest of Holland". Bolingbroke, *Corps Diplomatique*, I. 399. In November, 1711, Oxford told Buys that nothing had been obtained in Spain or the West Indies. Weber, *Friede von Utrecht*, p. 129; also *ibid.*, pp. 121 ff.

⁴ *Duke of Portland MSS.*, V. 1, 2.

⁵ This provision is in the fifteenth article of the Barrier treaty of Oct. 29, 1709, Dumont, *op. cit.*, vol. VIII., pt. 1., p. 244.

⁶ Swift, *History of the Four Last Years of the Queen*, in *Prose Works* (ed. Temple Scott in Bohn's Library), X. 130; Hist. MSS. Comm., *Duke of Portland MSS.*, IX. 310. In the summer of 1711 a project of making a Dutch settlement on the Mexican coast and forming a Dutch Company for the South Sea trade had some support in Holland. *Id.*, V. 9, 24, 28, 66, 69.

⁷ Bolingbroke, *op. cit.*, I. 420 ff.

her in agreeing to enter into peace conferences.⁸ A treaty was drafted on November 9/20, and signed at London on December 18/29, 1711; but owing to the opposition of the British it did not include the provision framed by Buys for the confirmation of earlier Anglo-Dutch treaties, and it was not ratified by the States General.⁹ The British ministry remained determined that the Barrier treaty of 1709 should be annulled, partly because they wished to deprive the Dutch of this basis for claiming a share either in the *assiento* or in other advantages for American trade which they hoped to obtain from Spain.¹⁰

Yielding to Britain's pressure the States General resolved on November 10/21 to participate in a congress that should treat for peace on the basis of the seven preliminary articles. They agreed with the British that the Congress should open at Utrecht in January, 1712; that the representatives of the various powers should appear in the quality of ministers plenipotentiary and not take on the character of ambassadors before the day of the signing of the peace; and that the ministers of the Duke of Anjou (Philip V.) and of the Electors of Bavaria and Cologne should not be admitted to the Congress until their interests had been adjusted.¹¹

The seven articles were also highly objectionable to the Imperialists, since they did not provide for the allotment of Spain and the Indies to an Austrian prince or deny them to the house of Bourbon. The provision of the second article—that measures should be taken to prevent the union of the French and Spanish crowns in the person of the same prince—seemed rather to imply Philip's continued possession of the Spanish throne. Yet since the Dutch had agreed to take part in the Congress, the Emperor Charles VI., formerly Charles III. of Spain, also consented.¹²

The rulers of Portugal and Savoy had reason to be dissatisfied with the seven articles since they indicated that Great Britain would not abide by the Anglo-Portuguese and Anglo-Savoy treaties, which provided that no peace or truce should be concluded while any Bourbon prince remained in Spain;¹³ yet these princes also yielded to Great Britain's desires and sent representatives to the Congress in the expectation of receiving "equivalents" as the price of their submission.

The Congress opened at Utrecht on January 29, 1712, although the Emperor's representatives did not appear until February 10.¹⁴ The British

⁸ *Ibid.*, pp. 466, 467.

⁹ The treaty is in the London P. R. O., St. Pap. For., Treaties, no. 345. The project, indicating the additions made by Buys, is in Bolingbroke, *op. cit.*, I. 471 n.

¹⁰ Swift, *Some Remarks on the Barrier Treaty*, in *Prose Works*, ed. cit., V. 138; *id.*, *History of the Four Last Years of the Queen*, ed. cit., X. 72, 73, 112, 113. On the British ministry's plans for territorial expansion in South America at this time see above, Doc. 96, pp. 142 ff.; and below, pp. 167-170.

¹¹ Swift, *Four Last Years*, ed. cit., pp. 76, 77, 79; G. de Lambert, *Mémoires*, VI. 726, 727.

¹² Weber, *op. cit.*, ch. V.

¹³ For the treaty between the allies and Portugal see above, Doc. 92. The provision referred to is in art. 21.

¹⁴ Weber, *op. cit.*, p. 203.

plenipotentiaries were the Bishop of Bristol (Lord Privy Seal) and the Earl of Strafford. They were not informed by their government of the existence of the articles concerning Great Britain's particular interests, signed on October 8,¹⁵ but were given disingenuous instructions regarding the question of the Spanish monarchy which concealed the ministry's intention of leaving Spain and her Indies under the sway of Philip V.¹⁶ In regard to the United Netherlands, they were instructed to insist that France should give the Dutch certain towns as a barrier, and certain commercial privileges; but these articles were not to be concluded until the Barrier treaty should be explained in a manner satisfactory to Great Britain. In respect to Great Britain's special interests, they were to demand from France acknowledgment of the Hanoverian succession; the retirement of the Pretender from French territory; a treaty of commerce; the entire island of St. Christopher; the "restitution" of Hudson Bay and Strait, "together with such further security for the trade and recompence for the losses of this Company as you shall be able to obtain"; the whole of Newfoundland with Placentia; abandonment of "all claim or title by virtue of any former treaty, or otherwise, to the country called Nova Scotia, and expressly to Port Royal . . . which is now in our possession". They were also to endeavor to describe and fix the bounds of the British and French settlements in the north of America. As to Spain, they were to demand "the advantages and privileges which, by virtue of any former treaty or agreement, our subjects are entitled to in any part of the dominions of the Spanish monarchy". They were also to insist on the annexation to the British crown of Gibraltar and Port Mahon with the island of Minorca; the granting of the *assiento* for thirty years to British subjects to be named by the British government (the South Sea Company was of course intended); and some land on the River Plate. They were also to try to secure the privileges of the most-favored nation, and, for British traders to the Spanish dominions, such exemption from duties upon all British products or manufactures as would amount to an advantage of at least fifteen per cent.

The French plenipotentiaries were the Marquis d'Huxelles and the Abbé de Polignac, who had acted in this capacity at Gertruydenberg,¹⁷ and Nicolas Mesnager, who had negotiated the British preliminaries at London.¹⁸ Their very full instructions stated that while the plan of the peace was based chiefly on the mode of partitioning the Spanish monarchy, it would also include concessions from France of securities to calm the uneasiness of her neighbors, and of promises of commercial advantages.¹⁹ Philip V., the instructions declared, would keep Spain and the Indies, and cede his other inherited

¹⁵ See above, Doc. 96.

¹⁶ The instructions to the British plenipotentiaries are in Bolingbroke, *op. cit.*, II. 94-105 n.

¹⁷ See above, p. 140.

¹⁸ See above, Doc. 96.

¹⁹ The instructions are printed in Weber, *op. cit.*, Anhang II. (1), and in Legrelle, *La Succession d'Espagne*, tom. VI (second ed.), app. 3.

states. Since by accepting the preliminary articles proposed by France, England and Holland had tacitly engaged to recognize Philip as King of Spain and the Indies, opposition on their part would be only feigned. France would, on conditions, recognize the Archduke Charles as Emperor. The instructions regarding territorial "satisfactions" and "barriers" for various of the belligerents, and commercial concessions to the Dutch, need not be described here. As to British interests, the instructions stated that these had been regulated by the convention signed by Mesnager,²⁰ except that discussion of the article concerning Newfoundland had been put off until the peace conferences. On this point Pontchartrain would send the plenipotentiaries a detailed memoir. Since the private interest of the British ministers made them wish to end the war speedily, there would be a perfect intelligence between the British plenipotentiaries and those of France. The English should insensibly be constituted mediators of the peace.²¹

Pontchartrain's memoir,²² so far as it concerned North America, was, very briefly, to the following effect: the French plenipotentiaries were not to listen to any proposal for ceding Canada to Great Britain, who had asked for it in the London conferences. They might however agree to the appointment of commissioners to regulate the limits between the French and British colonies, as stipulated by articles 7 and 8 of the treaty of Ryswyk. As to Newfoundland, although the English had often asked for the whole island, and had claimed that it had belonged to them entirely from the reign of Charles II. and that the French went there then only with his passports, they had not proved this.²³ The King of France had better right to all of the island, but was willing that the two crowns should remain in possession of the places in Newfoundland, which each occupied before the present war and still occupied. If however the English persisted in asking for the entire cession of Newfoundland, alleging that it was yielded to them at the Hague in 1709 and in London in 1711, the cession might be made on conditions, including the following: 1, the fortifications at Placentia to be demolished, but the French king to be permitted to withdraw his cannon and other effects and the English not to fortify there or in any other places ceded by the present treaty; 2, the French at St. Mary's Bay, Placentia, and other places named to have two years to withdraw and liberty to dispose of their effects; 3, French vessels to have liberty to fish on the Grand Bank and on the Newfoundland coasts as before the war, using the beach of Placentia and of the other places on the island where they have always been, and to salt and dry their fish there

²⁰ Doc. 96.

²¹ In a letter of Jan. 30, 1712, Louis XIV. told his plenipotentiaries that when they were in accord with the English they need not disturb themselves any more about the chimerical demands of the Dutch or other belligerents, who would finally consent to the conditions that England should find just. P. R. O., St. Pap. For., Treaty Papers, no. 98.

²² The memoir, dated Jan. 2, 1712, is in Archives des Aff. Étr., Mémoires et Documents, France, 1425.

²³ Memoirs on the cession of the whole island of Newfoundland to the English deny the truth of Marlborough's assertion to Torcy, that it belonged entirely to the English in the reign of Charles II., and that, at that time, the French could go there only with passports from the King of Great Britain. *Ibid.*, Feb. 27, 1712.

and establish scaffolds and *vigneaux*; 4, the English to restore to France Acadia with Port Royal, Cape Breton Island remaining with France. Should the English too strongly oppose these stipulations the French might forego the demand that the ceded parts of Newfoundland should not be fortified by the English. If absolutely necessary for the peace the French might give up the demolition of Placentia.

As to the limits of Acadia, the Kennebec River was to be demanded as the boundary, as fixed by the Grandfontaine-Temple treaty made after Breda, which could no longer be found. If the English should object that article 7 of the treaty of Ryswyk declared that each party should be put in possession again of the colonies it had before the war, and that therefore they should be re-established in the fort of Penikuit (Pemaquid), and that the St. George River should be the boundary, the French could easily reply; for the treaty of Ryswyk was not intended to derogate from the execution of the treaty of Breda. Having no "habitation" in the peninsula between the Kennebec and the St. George, the English had no right there. Again, if the English should object that the concession of 1665 to Temple fixed the limits at the St. George, the French were to reply that when Acadia was restored to France the old boundary was established at the Kennebec. If the English should persist in demanding the St. George as the boundary, the king would agree to this if each party were conceded the right of fortification.

The article of the Grandfontaine-Temple treaty prohibiting the English and the French from fishing or trading on the other's coasts was renewed in 1686 and should be mentioned in the treaty to be made.

As to the Bay of the North (Hudson Bay), if the English should persist in demanding its cession the plenipotentiaries should propose to insert in the treaty articles like the 7th and 8th of the treaty of Ryswyk, providing for the discussion of the matter by commissioners of either side. Failing this, the plenipotentiaries might propose that the part of the bay north of the 55th degree of latitude should remain to the French, while the English should keep possession of the part from 55 degrees to the bottom of the bay on the south. But if the English should still persist in their demand, the king would consent to yield them all the bay if they would abandon their pretensions to Placentia and the French part of Newfoundland, and would return all of Acadia, reserving to the French the liberty of navigating in the bay if in future a passage for circumnavigating the world should be discovered.

Of the Emperor's instructions to Sinzendorf,²⁴ it need only be said that they directed him to insist on the preliminaries of 1709,²⁵ to obstruct the peace conferences, and to offer the English all those advantages in the Spanish Indies and in other parts of the monarchy that they expected to receive or had already received from France and the "Duke of Anjou".²⁶

²⁴ Weber, *op. cit.*, p. 195. For the text of the instructions see *ibid.*, Anhang II. (2).

²⁵ See above, p. 138.

²⁶ When Prince Eugene was in London, in January, 1712, he offered to leave the English in absolute possession of the commerce of Spain and the Indies. Torcy, *Mémoires* (ed. Michaud and Poujoulat), p. 704.

The Dutch instructions are perhaps not extant.²⁷ Their nature may in part be divined from the French plenipotentiaries' report that the great object of the Republic was the trade to the Spanish Indies.²⁸ The fear of not securing this was the chief cause of its repugnance to leaving Philip V. on the Spanish throne.²⁹

Only the main stages in the progress of the negotiations, in so far as they bear on America, can be noted here and in subsequent Introductions. On February 11 the French delivered in writing a "specific explanation" of their offers for a general peace.²⁹ France would cede to Great Britain the island of St. Christopher, and the whole of Hudson Bay and Strait; but Great Britain should restore to France Acadia, with Port Royal and the fort. France would also cede Newfoundland, reserving only the fort of Placentia and the right of catching and drying fish, as before the war. As to the commerce of Spain and her Indies, Louis XIV. would engage, by virtue of his powers therefor, that this commerce should be allowed as it was during the reign and until the death of Charles II., and would promise that the French would submit, like all the other nations, to the laws and regulations made by the King of Spain's predecessors with respect to the commerce and navigation of the Spanish Indies. Louis XIV. would take, in concert with the allies, measures for hindering the crowns of France and Spain from being united on the same head.

In framing these offers and demands, the French plenipotentiaries had consulted with the English, and had drawn up the article concerning trade to the Spanish Indies in such a way as to conceal from the allies the Anglo-French convention of London.³⁰ Yet even the Tories resented the French king's proposals, especially that of postponing his acknowledgment of the queen's title until the signing of the peace,³¹ and the House of Lords declared its readiness to continue in the war until a safe and honorable peace could be obtained.³²

Louis XIV. was encouraged to ask for these comparatively favorable terms by the obvious breach between the English and their principal allies. Dutch insistence on an equal share with the British in the Spanish and Spanish-American trade continued to anger the Tory government.³³ On February 16/27 the House of Commons adopted resolutions to the effect that the

²⁷ They were not found by Weber in the Rijksarchief at the Hague. Weber, *op. cit.*, p. 196.

²⁸ French plenipotentiaries to King, Jan. 24, and, especially, Jan. 30, 1712, P. R. O., St. Pap. For., Treaty Papers, no. 98.

²⁹ *Actes*, I. 308 ff. In English, in "History of the Peace," in *Somers Tracts*, XIII. 228, 229.

³⁰ "Et pour les satisfaire sur leur delicatesses nous confondimes leur commerce dans les Indes avec celuy de la Hollande. Pour cacher même aux yeux des allies le traité fait avec l'Angleterre, nous convinmes d'insérer dans les offres que nous faisons a cette couronne la cession de l'Isle de St. Christophle comme si elle n'estoit pas desja faite." French plenipotentiaries to King, Feb. 3, 1712, P. R. O., St. Pap. For., Treaty Papers, no. 98.

³¹ Cobbett's *Parl. Hist.*, vol. VI., cols. 1108, 1109.

³² *Journals of the House of Lords*, XIX. 379, 380.

³³ *Duke of Portland MSS.*, IX. 322-324; Bolingbroke, *op. cit.*, II. 186 n.

Barrier treaty of 1709 included "several articles destructive to the trade and interest of Great Britain and therefore highly dishonorable to her Majesty" and that Viscount Townshend and all who advised the ratifying of the treaty were enemies to the queen and the kingdom.³⁴ On March 1/12 a long Representation, reported from a committee of the House of Commons,³⁵ declared that the Dutch and Austrians had failed to fulfill the terms of the Grand Alliance; that Great Britain had borne a disproportionate weight of the war; that she might reasonably expect compensation for this through special commercial advantages in the terms of peace; and that her interests had been neglected in the Barrier treaty with regard to trade both in the Spanish Netherlands and in the other dominions of Spain. In respect to these last, the Representation declared that the rights of British subjects had been surrendered; "for although by the 16th and 17th articles of the treaty of Münster, made between his Catholic Majesty and the States General, all advantages of trade are stipulated for, and granted to, the Hollanders, equal to what the English enjoyed; yet the Crown of England not being a party to that treaty, the subjects of England have never submitted to those articles of it; nor even the Spaniards themselves ever observed them; but this treaty revives those articles in prejudice of Great Britain, and makes your Majesty a party to them; and even a guarantee to the States General for privileges against your own people". The Representation further stated that, as it appeared that Lord Townshend had no authority to conclude several of the articles most prejudicial to the British, the committee hoped that the queen would find means for amending them, so that they might accord with Britain's interest.

The breach between Great Britain and her allies continued to widen.³⁶ Early in March the ministers of the allied powers at Utrecht presented their "specific demands".³⁷ Those of Great Britain concerning America were as

³⁴ *Journals of the House of Commons*, XVII. 92.

³⁵ *Ibid.*, pp. 94, 119-123.

³⁶ Drummond wrote to Oxford from Amsterdam on Feb. 27/Mar. 8, 1712, "The Grand Pensionary laments heartily the growing differences between this State and England". *Duke of Portland MSS.*, V. 146.

³⁷ The British demands were as follows: "Sa Majesté Tres-Chrestienne remettra à sa Majesté la Reyne de la Grande Bretagne le jour de l'échange des ratifications de la paix à faire, des actes autentiques et formels de cession des Isles de Saint Christophle et de Terre neuve, avec la ville de Plaisance et les autres isles situées dans les mers à l'entour; comme aussi l'Acadie avec la ville de Port Royal, autrement appelée Annapolis Royale, et ce qui en depend dudit pays.

"Le Roy Très-Chretien restituera à la Reyne et au royaume de la Grande Bretagne, le Baye et le detroit de Hudson, ensemble toutes les terres, mers, costes, rivières, places et forts y appartenans, et consentira que les limites entre ladite Baye de Hudson, et les possessions des François sur les costes de la riviere de Saint Laurens, soient réglées, et qu'il soit deffendu aux sujets de la Grande Bretagne et de la France, de ne jamais passer les dites limites, ni d'aller par mer ou par terre les uns aux autres.

"Le Roy Très-Chretien fera aussi avoir à la Compagnie Angloise de la Baye Hudson, en dédommagement juste et raisonnable de toutes les pertes que ladite Compagnie a souffertes par l'invasion et deperadation, faite par les François, en temps de paix à leurs colonies, vaisseaux, personnes et effets.

"Les sujets de la France, habitans de la Canadie et autres, s'abstiendront a l'avenir d'empescher le négoce réciproque, entre les sujets de la Grande Bretagne, et les

follows: the King of France was to cede to Great Britain the islands of St. Christopher and of Newfoundland with Placentia and the neighboring islands, as also Acadia with Port Royal and such part of the country as depended thereon. He was furthermore to restore to Great Britain Hudson Bay and Strait together with all the lands, seas, coasts, rivers, places, and forts belonging thereto and to consent that the limits between Hudson Bay and the possessions of the French on the banks of the St. Lawrence should be regulated and the subjects of Great Britain and France prohibited from ever passing these limits or going by land or sea, the one to the other. He was also to cause the Hudson's Bay Company to be reimbursed for losses suffered through the French in time of peace. Frenchmen were to abstain from hindering the trade between the British and the Indians, and from disturbing the Five Nations, or other tribes subject or friendly to the British. Spain and the Indies were not mentioned.

In March the British government sent Gaultier to Versailles on his way to Utrecht, and Thomas Harley to Utrecht on his way to Hanover, in order to promote the concerting between the English and French of a general plan of peace which should be presented to the allies at the General Congress as the French ultimatum. Moreover—and this was a later consideration—since the death of the Dauphin, on March 8, left only a sickly infant between Philip and the French succession, they were to propose that Philip, with the concurrence of the Cortes, should formally renounce for himself and his issue all right to the crown of France.³⁸ At Versailles, Gaultier orally explained the British programme for “satisfying” the allies; and declared that the Duke of Ormonde, the British captain-general, might be given instructions to avoid action.³⁹ On March 20, two days before Gaultier reached Versailles,⁴⁰ Louis XIV., feeling that the Dauphin's death tended to strengthen the war parties in the nations opposed to France, instructed his plenipotentiaries to make new concessions, in order to strengthen the Tory government and detach Great Britain still further from her allies.⁴¹ If compelled, they were to yield Acadia, provided France kept Cape Breton; or they might even cede both places, if this could make peace.⁴² After receiving Gaultier's proposals Louis doubtless judged these and other extreme concessions unnecessary; for on March 24 he wrote his plenipotentiaries to await Harley's arrival before exhausting their last powers.⁴³

natifs des pays de l'Amerique; comme aussi d'inquieter les Cinq Nations, ou cantons Indiens ou autres, qui sont sous l'obeissance, ou dans l'amitié de la Grande Bretagne.” P. R. O., St. Pap. For., Treaty Papers, no. 98; Min. des Aff. Étr., Corr. Pol., Hollande, no. 242, ff. 30-37, printed in *Actes*, I, 320 ff.

³⁸ Bolingbroke, *op. cit.*, II, 185, 207, notes.

³⁹ Weber, *op. cit.*, pp. 223, 224.

⁴⁰ King to plenipotentiaries, Mar. 23, 1712, Min. Aff. Étr., Corr. Pol., Hollande, no. 233.

⁴¹ Torcy to plenipotentiaries, Mar. 20, 1712, P. R. O., Treaty Papers, no. 98; King to same, same date, *ibid.*; from Huxelles, Mar. 27, 1712, Min. Aff. Étr., Corr. Pol., Hollande, no. 233.

⁴² Answer to the demands made by the English plenipotentiaries, Mar. 20, 1712, P. R. O., Treaty Papers, no. 98.

⁴³ King to plenipotentiaries, Mar. 24, 1712, P. R. O., Treaty Papers, no. 98.

To afford Great Britain and France an opportunity of arranging a plan of a general peace, and of settling the questions in dispute between them, a pretext was employed for suspending the official activities of the Congress. The French plenipotentiaries, on March 30, refused to reply in writing to the demands of the allies, or in general to treat otherwise than orally. Since they persisted in their refusal, the Congress, for several months thereafter, virtually ceased to function.⁴⁴ During this pause the governments at London and Versailles, as well as their plenipotentiaries at Utrecht, tried to come to an agreement respecting, (1) means to prevent a union of the French and Spanish crowns; (2) a suspension of arms; (3) commercial and colonial questions; (4) satisfaction and security for the other belligerents.

The British government threatened to break off peace negotiations unless substantial means were adopted to prevent a union of the crowns.⁴⁵ It rejected the French offer to allow the King of Spain to choose between the crowns,⁴⁶ but proposed instead that Philip V. should retain his right to the crown of France; immediately yield Spain and the Indies to the Duke of Savoy; receive in exchange the countries possessed by the Duke; and keep Sicily also until his succession to the French throne.⁴⁷

The King of France asked his grandson to choose between the two British propositions: to renounce his right to the crown of France, and content himself with Spain and the Indies; or to exchange Spain and the Indies for the Duke of Savoy's estates.⁴⁸ Philip agreed to the former plan.⁴⁹ As an equivalent for accepting a British expedient for preventing the union of the crowns, the British government consented to a suspension of arms,⁵⁰ and secretly ordered the Duke of Ormonde to avoid any siege or battle.⁵¹ As a further condition for consenting to a public suspension of arms the queen demanded the custody of Dunkirk until the States General should consent to yield France a satisfactory equivalent for its demolition.⁵² She declared that in case her foreign mercenaries refused to retire with Ormonde's English forces she would feel justified in concluding a peace apart from her allies.⁵³ By articles signed by their ministers on June 6/17, and June 22, N. S., 1712, respectively, the queen and king agreed to a cessation of arms for two months, which might be extended to three or four months.⁵⁴ During this time an

⁴⁴ Weber, *op. cit.*, p. 227.

⁴⁵ St. John to Torcy, Mar. 23/Apr. 3, 1712, in Bolingbroke, *op. cit.*, II. 227 ff.; "Report", app. no. 16.

⁴⁶ Same to same, Apr. 6/17, 1712, in Bolingbroke, *op. cit.*, II. 249 ff.; "Report", app. no. 18.

⁴⁷ Same to same, Apr. 29/May 10, 1712, in Bolingbroke, *op. cit.*, II. 280 ff.; "Report", app. no. 20.

⁴⁸ Torcy to St. John, May 13, 1712, in Bolingbroke, *op. cit.*, II. 314 ff., and "Report", app. no. 21. (In the "Report" the letter is dated May 18.)

⁴⁹ Philip V. to Louis XIV., Baudrillart, *Philippe V. et la Cour de France*, I. 498, 499.

⁵⁰ St. John to Torcy, Apr. 29/May 10, 1712, Bolingbroke, *op. cit.*, II. 286; same to Strafford, May 3/14, 1712, *ibid.*, p. 309; St. John to Torcy, May 24/June 4, 1712, *ibid.*, pp. 335 ff.

⁵¹ St. John to Ormonde, May 10/21, 1712, *ibid.*, pp. 319 ff.

⁵² *Ibid.*, pp. 338, 339 n.

⁵³ St. John to Torcy, June 20/July 1, 1712, *ibid.*, pp. 400 ff.; "Report", app. no. 27.

⁵⁴ Bolingbroke, *op. cit.*, II. 366, 367 n.; "Report", app. no. 24.

attempt was to be made to conclude the general peace treaty, and the article to prevent the union of the crowns was to be executed, by means of formal renunciations. The King of Spain's renunciation was to be accepted by the King of France and registered in all the parliaments of his kingdom. The letters patent granted to Philip V. for preserving his rights to the French crown were to be annulled. The renunciation by the Duke of Berry and the Duke of Orleans of any right to the crown of Spain was to be accepted by the Cortes. All of the aforesaid parties were to acknowledge as successor to the crown of Spain, after Philip and his issue, the prince that should be agreed on in the future treaty of peace. Dunkirk was to be delivered to the English as security for the execution of the article.

The suspension of arms thus agreed on was confined to the armies in Flanders. Louis XIV. desired, and the queen consented, that the suspension be made general, by sea as well as by land;⁵⁵ but the conclusion of a convention to that effect was obstructed by Britain's demands on behalf of the Duke of Savoy. Besides other advantages, she asked for him and his children the right of succession to the crown of Spain and the Indies, immediately after Philip and his descendants. To conclude on this basis, Viscount Bolingbroke (St. John's title after July 17) was sent to France.⁵⁶ He was also to speak about articles of the Anglo-French treaties of peace and commerce;⁵⁷ discover the "real ultimatum" of France for the allies; and adjust the forms of the renunciations and settlements.

The convention for a general suspension of arms between Great Britain and France was signed on August 21, N. S., although dated two days earlier, when the first draft was prepared.⁵⁸ Its main provision was for a cessation of hostilities from August 22 to December 22, 1712 (art. 1). As in the Anglo-French treaty of Ryswyk, ships and goods were to be restored if taken after six months, "beyond the Line and in all other parts of the world" (art. 3). The same truce was to be observed between Great Britain and Spain (art. 4).

An interpretative article, signed on August 24, declared that even though war were resumed after the fourth months' cessation, yet the truce for that period would be observed "beyond the Line and in all other parts of the world" from February 22 until June 22, 1713.⁵⁹

Philip V. ratified the treaty on November 1, 1712.⁶⁰ An article signed at London on November 26/December 7, 1712, and at Versailles a week later,

⁵⁵ Torcy to St. John, June 27, 1712, Bolingbroke, *op. cit.* II. 396; St. John to Torcy, June 20/July 1, 1712, *ibid.*, pp. 404, 405.

⁵⁶ His instructions, dated July 31/Aug. 11, 1712, are in Bolingbroke, *op. cit.*, III. 2-6 n. and in "Report", app. no. 35.

⁵⁷ Bolingbroke to Prior, Aug. 27, 1712, Bolingbroke, *op. cit.*, III. 23 ff.

⁵⁸ Bolingbroke to Dartmouth, Aug. 22, 1712, *ibid.*, pp. 17, 18.

⁵⁹ See below, p. 166.

⁶⁰ The original manuscript of the ratification, in Spanish, together with an English translation, is in the P. R. O., St. Pap. For., Spain, vol. 79. The text is printed in Cantillo, *Tratados de Paz y de Comercio*, pp. 56-58.

provided for prolonging the truce until April 22, 1713;⁶¹ and the prolongation was published without delay.⁶²

As early as July 28 Torcy had written Bolingbroke that as soon as the agreement for a general suspension should be signed, the king would send out cutters to make it public in all the American colonies, and he supposed that the queen would do the same.⁶³ Dartmouth promptly forwarded the queen's proclamation for the observance of the truce to the colonial governors in America, who received it in October.⁶⁴ Since the cessation did not take place beyond the Line until the following February 21, it was to remain in effect until June 21, 1713.⁶⁵ Passes granted to French and Spanish ships were to be respected. The colonists heartily welcomed the armistice and the prospect of peace.⁶⁶ Had they however known the terms of the letters patent whereby, on September 14, 1712, Louis XIV. granted the commerce of Louisiana to Sieur Antoine Crozat, they might have predicted that another war with the French in America would soon follow that now drawing to a close.⁶⁷

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Text: MS. The original instrument of the treaty between Great Britain and France for the suspension of hostilities, the ratification of the same, the explanation of the third article, and the prolongation of the treaty are preserved in the Public Record Office, London, State Papers Foreign, Treaties, no. 70, and in the Archives of the Ministry of Foreign Affairs in Paris.

Text: Printed. *Actes, Mémoires, et autres Pièces Authentiques concernant la Paix d'Utrecht* (second ed., 1714, 1715), V. 16 ff.; G. de Lamberty, *Mémoires pour servir à l'Histoire du XVIII^e Siècle*, tom. VII. (1730), pp. 484-487; J. Dumont, *Corps Diplomatique* (1726-1731), tom. VIII., pt. I., pp. 308-310; *Mémoires des Commissaires du Roi et de ceux de sa Majesté Britannique* (1755-1757), II. 109-111.

Translation: English. "Report from the Committee of Secrecy on the Negotiations of Peace and Commerce", in *Reports from Committees of the House of Commons not inserted in the Journals*, vol. I. (1803), app., no. xxix; same in Cobbett's *Parliamentary History*, VII., app., no. 29; A. Boyer, *History of the Reign of Queen Anne digested into Annals: Year the Eleventh* (1713), pp. 204-207; [C. Freschot], *The Compleat History of the Treaty of Utrecht, as also that of Gertruydenberg; containing all the Acts . . . to which are added the Treaties of Radstat and Baden* (1715), vol. I., pt. II., pp. 114-117.

⁶¹ See below, p. 166.

⁶² Bolingbroke, *op. cit.*, II. 223, 225.

⁶³ *Ibid.*, p. 465.

⁶⁴ *Cal. St. Pap. Col.*, 1712-1714, nos. 99, 106, 114(ii), 117, 122, 144.

⁶⁵ *Ibid.*, no. 66.

⁶⁶ *Ibid.*, nos. 145(ii), 153, etc.

⁶⁷ The text of the letters patent to Crozat is printed in *Recueil des Déclarations, Arrests . . . concernant l'Etablissement d'une Compagnie pour le Commerce des Indes Orientales* (Paris, 1716), and elsewhere. A contemporary pamphlet, *A Letter to a Member of the P—t of G—t B—n, occasion'd by the Privilege granted by the French King to Mr. Crozat* (1713), p. 28, declared that "one may insist that the trade of Mr. Crozat and the French Kings sovereignty in Louisiana, according to its present limits, entirely ruins all the English settlements in America".

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TEXT.⁶⁸

Louis par la grace de Dieu roy de France et de Navarre a tous ceux qui ces presentes lettres verront, salut. Comme notre tres amé et feal chevalier Jean Baptiste Colbert, marquis de Torcy, Croissy, Sablé, Boisdauphin, et autres lieux, conseiller en tous nos conseils, ministre et secretaire d'estat, commandeur, chancelier et garde des sceaux de nos ordres, surintendant general des postes et relays de France, en vertu du plein pouvoir que nous luy avons donné, et reciproquement le Sieur Henry vicomte de Bolingbroke, baron de St. Jean de Lidiard, Tregoze, conseiller ordinaire en tous les conseils de notre Tres Chere et Tres Amée soeur la Reyne de la Grande Bretagne, et son principal secretaire d'estat pareillement muny de ses pleins pouvoirs auroient signé le dix neuvieme Aoust mil sept cens douze le traité de suspension d'armes dont la teneur s'ensuit.

Comme il y a lieu d'esperer un heureux succez des conferences establies a Utrecht par les soins de leurs Majestez Tres Chrestienne et Britannique, pour le retablisement de la paix generale, et qu'elles ont jugé necessaire de prevenir tous les evenmens de guerre capables de troubler l'estat ou la negotiation se trouve presentement, leursdits Majestez attentives au bonheur de la Chrestienté sont convenües d'une suspension d'armes, comme du moyen le plus seur pour parvenir au bien general qu'elles se proposent. Et quoyque jusqu'a present sa Majesté Britannique n'ayt pu persuader ses alliez d'entrer dans ces mesmes sentimens, le refus qu'ils font de les suivre n'estant pas une raison suffisante pour enpecher sa Majesté Tres Chrestienne de marquer par des preuves effectives le desir qu'elle a de retablir au plutost une parfaite amitié, et une sincere correspondance entre Elle et la Reyne de la Grande Bretagne, les royaumes, etats, et sujets de leurs Majestez, sadite Majesté Tres Chrestienne apres avoir confié aux troupes Angloises la garde des ville citadelle et forts de Dunkerque pour marque de sa bonne foy, consent et promet comme la Reyne de la Grande Bretagne promet aussy de sa part :

I. Qu'il y aura une suspension generale de toutes entreprises et faits d'armes, et generalement de tous actes d'hostilitez entre les armées, troupes,

⁶⁸ The text is taken from the original manuscript of the ratification by Louis XIV., preserved in the P. R. O., St. Pap. For., Treaties, no. 70.

flottes, escadres, et navires de leurs Majestez Tres Chrestienne et Britannique pendant le terme de quatre mois, a commencer du vingt deuxieme du present mois d'Aoust jusqu'au vingt deuxieme du mois de Decembre prochain.

2. La mesme suspension sera establie entre les garnisons et gens de guerre que leurs Majestez tiennent pour la deffense et garde de leurs places dans tous les lieux ou leurs armes agissent, ou peuvent agir, tant par terre que par mer, ou autres eaux, ensorte que s'il arrivoit que pendant le tems de la suspension, on y contrevint de part ou d'autre par la prise d'une ou de plusieurs places, soit par attaque, surprise, ou intelligence secrette, en quelque endroit du monde que ce fut, qu'on fit des prisonniers, ou quelques autres actes d'hostilité, par quelque accident impreveu, de la nature de ceux qu'on ne peut prevenir, contraires a la presente cessation d'armes, cette contravention se reparera de part et d'autre de bonne foy, sans delay ny difficulté, restituant sans aucune diminution ce qui aura esté pris, et mettant les prisonniers en liberté sans demander aucune chose pour leur rançon ny pour leur depense.

3. Pour prevenir pareillement tous sujets de plainte et contestations qui pourroient naitre a l'occasion des vaisseaux, marchandises, ou autres effets qui seroient pris par mer pendant le tems de la suspension, on est convenu reciproquement que lesdits vaisseaux, marchandises et effets qui seroient pris dans la Manche, et dans les Mers du Nord, apres l'espace de douze jours a compter depuis la signature de la susdite suspension seront de part et d'autre restituez reciproquement.

Que le terme sera de six semaines pour les prises faites depuis la Manche, les Mers Britanniques et les Mers du Nord jusqu'au Cap St. Vincent.

Et pareillement de six semaines depuis et audela de ce Cap, jusqu'a la Ligne, soit dans l'Ocean, soit dans la Mer Mediterranée.

Enfin de six mois audela de la Ligne, et dans tous les autres endroits du monde sans aucune exception ny autre distinction plus particuliere de tems et de lieu.

4. Comme la mesme suspension sera observée entre les royaumes de la Grande Bretagne, et d'Espagne, sa Majesté Britannique promet qu'aucun de ses navires de guerre ou marchands, barques ou autres batimens appartenans a sa Majesté Britannique ou a ses sujets, ne seront desormais employez a transporter, ou convoyer en Portugal, en Catalogne, ny dans aucun des lieux ou la guerre se fait presentement, des troupes, chevaux, armes, habits, et en general toutes munitions de guerre et de bouche.

8. Les Ratifications du present traité seront echangées de part et d'autre dans le terme de quinze jours, ou plutost si faire se peut.

En foy de quoy et en vertu des ordres et pouvoirs que nous soussignez avons receu du Roy Tres Chrestien et de la Reyne de la Grande Bretagne, nos maitre et maitresse, avons signé les presentes et y avons fait apposer les sceaux de nos armes. Fait a Paris le dix neuvieme Aoust mil sept cens douze.

COLBERT DE TORCY.

BOLINGBROKE.

Nous ayant agreable le susdit traité de suspension d'armes en tous et un chacun les points et articles qui y sont contenus et declarez, avons iceux accepté, approuvé, ratifié, et confirmé, acceptons, approuvons, ratifions, et confirmons, et le tout promettons en foy et parole de roy, garder et observer inviolablement, sans aller ny venir au contraire directement ou indirectement en quelque sorte et maniere que ce soit. En temoin de quoy nous avons signé

ces presentes de notre main, et a icelles fait apposer notre scel. Donné a Fontainebleau le vingtroisieme Aoust l'an de grace mil sept cens douze et de notre regne le soixante dixieme.

LOUIS.

Par le Roy.

COLBERT.

Comme il est porté par l'article 3^e du traité de suspension d'armes que les vaisseaux marchands ou autres effets qui seroient pris de part et d'autre par mer audela de la Ligne et dans tous les autres endroits du Monde etc. suivant la derniere clause dudit article apres l'expiration de six mois, seront reciproquement restituez ; pour prevenir tout equivoque, et tout embaras qui pourroient naistre, et toutes les difficultez qu'on pourroit former sur le fondement que la suspension n'estant que de quatre mois, les prises qui seront faites dans lesdits endroits au bout de six mois seront bonnes, il a esté convenu que si malheureusement, ce qu'a Dieu ne plaise, la guerre recommencoiz encore entre leurs Majestez Britannique et Tres Chrestienne, la mesme suspension de quatre mois sera observée audela de la Ligne et dans les autres endroits marquez en general par la derniere clause de l'article 3^e en sorte que ladite suspension commencera dans ces mesmes endroits le 22^e Fevrier 1713 pour estre observée jusqu'au vingt deux Juin de la mesme année 1713 quoyqu'il arrive en Europe. Et les ratifications de ce present article seront échangées de part et d'autre dans le terme de quinze jours, ou plutôt s'il est possible. Fait a Fontainebleau le vingt quatre Aoust mil sept cens douze.

BOLINGBROKE.

COLBERT DE TORCY.

Comme un traité de suspension d'armes tant par terre, que par mer, ou autres eaux, a esté fait entre leurs Majestez Britannique et Tres Chretienne, et signé à Paris le dixneuvieme d'Aoust mil sept cens douze pour le terme de quatre mois à commencer du 22 du dit mois d'Aoust ; et comme la dite suspension expirera le 22 jour de ce present mois de Decembre n. s. leurs dites Majestez la Reine de la Grande Bretagne et le Roy tres Chrétien étant de meme sentiment qu'elles estoient alors, et ayant les memes veües pour le bonheur de la Chretienneté, ont jugé necessaire de prevenir tous les evenemens de la guerre capables de troubler les mesures qui ont esté prises pour parvenir au bien general qu'elles se proposent, et pour ces raisons et autres ont agréé et consenti, comme elles agreent et consentent par ces presentes, de prolonger et continuer la dite suspension d'armes pour le terme de quatre mois à commencer du dit 22^{me} de ce present mois de Decembre 1712, et à durer jusqu'au 22^{me} du mois d'Avril de l'an 1713 n. s., en sorte que le dit traité de suspension d'armes conclu à Paris le jour susdit sera continué et prolongé en toutes manieres sans aucune interruption ou obstruction pour le terme susmentionné, comme s'il estoit renouvelé et inseré icy de mot à mot.

En foy de quoy nous avons signé les presentes, et y avons apposé les sceaux de nos armes. Fait à Londres le $\frac{26 \text{ Novembre}}{7 \text{ Decembre}}$ et à Versailles le quatorze Decembre mil sept cens douze.

BOLINGBROKE.

COLBERT DE TORCY.

The assiento or contract for allowing subjects of Great Britain the liberty of importing negroes into Spanish America, signed by the King of Spain at Madrid, March 26, 1713, N. S.

INTRODUCTION.

After the kings of France and Spain had agreed to the measures proposed by Great Britain for preventing the union of their crowns,¹ and after a truce had been signed by Great Britain and France,² the British government sent Lord Lexington on an important mission to Spain. He was to witness Philip V.'s renunciation of the French crown, and its confirmation by the Cortes.³ Subsequently, and after Philip had acknowledged the Hanoverian succession and had declared that he would execute the concessions made by Louis XIV. on his behalf,⁴ that in case of the failure of his issue the crowns of Spain and the Indies should devolve to the house of Savoy, and that Sicily should immediately be yielded to Savoy, then Lexington was to take on the character of ambassador extraordinary, and acknowledge Philip as king of Spain and the Indies. Then he was also to state that the British plenipotentiaries at Utrecht would receive those of Spain,⁵ and he was to ask for the performance of the stipulations promised by the French ministers on Philip V.'s behalf, including the signing of the assiento.

On the day of Lexington's arrival at Madrid, October 18, 1712, the king gave him audience, and appointed Grimaldi, who was a secretary of state, and the Marquis de Bedmar, to treat with him.⁶ On the following day Lexington discussed with Bedmar the British demands: (1) recognition of the Hanoverian succession; (2) Philip V.'s renunciation of the French crown; (3) the renewal of former treaties; (4) the cession of Minorca, and (5) of Gibraltar to Great Britain; and (6) of Sicily to Savoy; (7) commerce on the same footing as in the time of Charles II. of Spain, except that (8) the British should have the assiento for thirty years, with some land on the Rio de la Plata, as well as (9) exemption from the duties amounting to fifteen per cent. on British products and goods in Spanish and Spanish-American ports; (10) the advantages of the most-favored nation, including France; (11) amnesty to Spanish adherents of the house of Austria, especially to the Catalans.⁷ The Spanish answer of October 25⁸ granted articles 1, 2, 3,

¹ See above, p. 160.

² Doc. 97.

³ Lexington's instructions are in P. R. O., St. Pap. For., Archives, no. 269.

⁴ Cf. above, p. 153.

⁵ See above, p. 154.

⁶ Lexington to Dartmouth, Oct. 24, 1712, N. S., P. R. O., St. Pap. For., Spain, no. 79.

⁷ "Sa Majesté Britannique demande", P. R. O., St. Pap. For., Spain, no. 79.

⁸ "Apuntamientos para responder â Milord de Lexington", *ibid.*

7, 8, and 10, and referred articles 4, 5, 6, 9, and 11 to the Marquis de Monteleon, for adjustment in London.⁹ Article 8 was conceded with the restrictions that the assientists should build only timber houses and no fortifications in the district assigned them on the La Plata, and that the King of Spain should appoint an inspector to see that the assientists did not abuse their privileges there. As for article 9, although Lexington urged it, yet he wrote to Dartmouth that the British would do better without it, since the same exemption would be granted to the French and Dutch and result in a glutting of the market. "Therefore", he wrote, "we had better stick to our clandestine trade, which by the assiento we have entirely to ourselves, exclusive to all the world, and make difficult to others as we can."¹⁰

Lexington witnessed the ceremony of Philip's renunciation on November 5,¹¹ and a few days later was joined by Manuel Manasses Gilligan,¹² a man thoroughly versed in the Spanish-American negro trade.¹³ A draft of an assiento in forty-two articles was presented by Gilligan to the Spanish ministers in December,¹⁴ referring to a junta of three councillors of the Indies, and by them to a second junta.¹⁵ But neither the assiento nor the treaties could be finished until Monteleon was heard from, and Bergeyck, who was to manage the negotiations for the commercial treaty, should arrive from France.¹⁶ Finally Monteleon's report from London paved the way for a settlement. It stated that if Spain would agree to the regulation of commerce as in the time of Charles II., to the most-favored-nation clause, and to the assiento Queen Anne would desist from demanding exemption from the fifteen per cent. duties, provided that she received an equivalent therefor.¹⁷ The equivalent—permission to the assientists to send a ship of 500 tons yearly, during the thirty years, to trade in the Spanish Indies—was discussed at London by Monteleon and Arthur Moore,¹⁸ proposed by Gilligan in Madrid, and accepted by the Spanish government on condition that the South Sea Company should not engage in any contraband trade.¹⁹ The Spanish government also consented to annul a contract made by Bergeyck for six French ships to go to

⁹ Monteleon was also to remit to the British ministers three additional articles, of which one provided that the fisheries and trade of Newfoundland should remain free to Guipuzcoans and other subjects of Spain who had engaged in them from time immemorial, and even in time of war. "Se mantendran los Guipuzcoanos y demas vasallos de su Magestad Catholica en el inmemorial libre uso que han tenido hasta ahora aun en tiempo de guerra en la navegacion, comercio, pesqueria de ballenas, y bacallao de Terranova sin la menor disminucion, y diferencia alguna como se hã practicado hasta ahora." P. R. O., St. Pap. For., Archives, no. 269.

¹⁰ Lexington to Dartmouth, Oct. 28, 1712, P. R. O., *ibid.*

¹¹ Lexington to Dartmouth, Nov. 6, 1712, P. R. O., St. Pap. For., Spain, no. 79.

¹² J. Burch to Mr. Lewis, Madrid, Nov. 14, 1712, *ibid.*

¹³ Scelle, *La Traite Nègrière*, II. 122; G. Parke, *Correspondence of Bolingbroke*, III. 109, 110.

¹⁴ Scelle, *op. cit.*, II. 541.

¹⁵ Cf. the preamble of the text of the assiento.

¹⁶ Lexington to Dartmouth, Dec. 12, 1712, and Jan. 9, 1712/1713, P. R. O., St. Pap. For., Spain, nos. 79, 80.

¹⁷ Scelle, *op. cit.*, tom. II., p. 532, note 4.

¹⁸ *Ibid.*, p. 541.

¹⁹ See the text of the article, p. 184.

the South Sea.²⁰ In objecting to this contract Oxford and Bolingbroke declared that the only foundation that had enabled them to obtain credits for the existing war, and had served as a pretext for those who entered into it, was the ruinous commerce of the French to those waters.²¹

On March 26, the day before the conclusion of the Anglo-Spanish preliminary treaty of peace,²² Philip V. signed the *assiento*, consisting of Gilligan's forty-two articles, modified, and an additional article, embodying the "equivalent". The nature and terms of this contract are fully discussed by Professor G. Scelle. Some of its more important provisions were, briefly, as follows: Queen Anne undertook that her appointees (the South Sea Company) should carry into the Spanish Indies, in British or Spanish ships (art. 7), in each of the thirty years beginning on May 1, 1713, 4800 *piezas de India*²³ (art. 1). From the duties thereon— $33\frac{1}{3}$ pieces of eight for each *pieza de India*—the assientists were to advance to Philip V. the sum of 200,000 pieces of eight (arts. 2, 3). The negroes might be brought into any of the ports of the North Sea, and 1200 *piezas* might be imported annually into Buenos Aires. For the subsistence of the latter and of the company's agents the assientists might hold some parcels of land on the Rio de la Plata, where a Spanish officer would reside and where they might build houses but only of wood (art. 9). Ships might be freighted in Panama or any other South Sea port for carrying the negroes to Peru (art. 10). The assientists might name judges conservators in the chief places in America (art. 13). Spanish officials were not to detain the company's ships or goods (arts. 14, 15). Returns might be made in the *flotas* or galleons, or in the assientists' own ships, and should be exempt from Spanish import duties (arts. 17, 26). Neither the French company nor any other persons were to bring any negroes into the Indies (art. 18). The company's factors might search suspected vessels arriving on the coast (art. 18), and the King of Spain would cause the *assiento* to be observed (arts. 19, 20). Spanish officials, on the other hand, might search the company's ships (art. 22). Although the company's ships might sail to or from British or Spanish ports, they were not to bring Spanish passengers or effects without the King of Spain's leave (art. 26). The British and Spanish sovereigns had each a quarter part interest in the *assiento* (art. 28), and debts to the assientists were recoverable as though due to the King of Spain (art. 33). Concessions in the *assientos* to Grillo, Porcio, Marin, de Guzman,²⁴ and the Companies of Portugal²⁵ and France,²⁶ if not

²⁰ Parke, *op. cit.*, III. 338, 347, 405, 406; Scelle, *op. cit.*, II., 533-537; E. W. Dahlgren, "Le Comte de Pontchartrain et les Armateurs de Saint-Malo", in *Revue Historique*, tom. LXXXVIII. (1905), 225-263.

²¹ Scelle, *op. cit.*, II. 534, note 3.

²² Doc. 99.

²³ For the meaning of this term see above, p. 39, note 5.

²⁴ For these *assientos* see Scelle, *Traite Nègrière*, I. 497-523, 621-632, 831-836, II. 3-68, and Elizabeth Donnan's *Documents illustrative of the History of the Slave Trade to America*, I. 105-107.

²⁵ Doc. 88.

²⁶ Doc. 89.

contrary to the present contract, were to be understood as made in its favor (art. 39). Besides the yearly permitted ship (additional art.), the assientists trusted that the King of Spain would allow them to use small ships from time to time, to import from Europe or the British North American colonies clothing, provisions, and other necessities for the exclusive use of the assientists, their negroes, agents, ships, etc. (art. 34).

While the assiento in most of its provisions resembled the articles proposed by Great Britain in 1707,²⁷ and the French assiento of 1701,²⁸ yet it went far beyond these not only in granting a much longer term for the duration of the agreement, but especially in conceding to the assientists occupancy of a district on the Rio de la Plata, and an annual ship. No wonder that Bolingbroke declared that Mr. Gilligan deserved to have his statue erected.²⁹

BIBLIOGRAPHY.

Text: MS. A manuscript copy of the assiento, in English, is in the Public Record Office, State Papers Foreign, Treaties, no. 474, bound up with the original of the "Declaratio super Errore in Pactione de Assiento nuncupata", which is signed and sealed by the Spanish plenipotentiaries at Utrecht. This English text differs verbally, in several instances, from the English text printed in the volumes mentioned below.

Text: Printed. English and Spanish. The assiento, with Spanish and English texts in parallel columns, was printed by her Majesty's special command by John Baskett, queen's printer, in 1713. Several copies are in the British Museum, and one in the P. R. O., Treasury Papers, vol. 176. A copy is also in the Library of the Department of State, Washington, D. C. **English:** *The Compleat History of the Treaty of Utrecht, as also that of Gertruydenberg* (1715), vol. I., pt. II., pp. 155-182; *A General Collection of Treatys* (1732), III. 375-397; [J. Almon], *Collection of all the Treaties between Great Britain and other Powers from 1688 to the Present Time* (1772), I. 83-107; *Collection of all the Treaties between Great Britain and other Powers from 1648 to 1783* (1785), I. 375-399. **Spanish:** *Coleccion de Tratados de Paz, Alianza, Comercio* (1796-1801), I. 99-124; A. del Cantillo, *Tratados de Paz y de Comercio* (1843), pp. 58-69; C. Calvo, *Recueil des Traités* (1862-1868), II. 78-101.

Translation: French. *Actes, Mémoires, et autres Pièces Authentiques concernant la Paix d'Utrecht* (second ed., 1714, 1715), V. 72-136; J. Dumont, *Corps Diplomatique* (1726-1731), tom. VIII., pt. I., pp. 331-337.

References: Contemporary and early writings. Hist. MSS. Comm., *Duke of Portland MSS.*, V. 148-474, *passim*, IX. 367, 372, 373; G. Parke, *Letters and Correspondence of the Right Hon. Henry St. John, Lord Viscount Bolingbroke* (1798), III. 109, 110, 117, 118, 339, 341, 347 ff., 375, 473, 480 ff., 507, 508 *et passim*; *Cal. St. Pap. Col.*, 1712-1714, no. 396.

²⁷ Cf. above, pp. 124-125. The articles are printed in Scelle, *op. cit.*, II. 699-703.

²⁸ Doc. 89.

²⁹ Parke, *op. cit.*, III. 375.

References: Later Writings. G. Scelle, *La Traite Nègrrière* (1906), II. 523-570; Dahlgren, *Relations Commerciales et Maritimes entre la France et les Côtes de l'Océan Pacifique* (1909), pp. 719-724.

TEXT.³⁰

The Assiento adjusted between their Britannick and Catholick Majesties, for the English Company's obliging itself to supply the Spanish West-Indies with black slaves, for the term of thirty years, to commence on the first day of May of this present year 1713, and to end on the like day in the year 1743.

THE KING.

Whereas the assiento agreed on with the Royal Guinea Company, settled in France, for the introducing of Negro slaves into the Indies, is determined, and the Queen of Great Britain being desirous of coming into this commerce, and in her name the English Company, as is stipulated in the preliminaries of the peace, and that this assiento should continue for the time and space of thirty years; Don Manuel Menasses Gilligan, deputed by her Majesty of Great Britain, did, in pursuance thereof, put into my hands a draught, made for that purpose, containing forty-two articles, for the regulating this contract; which I referred to the consideration of a junta of three ministers of my Council of the Indies, that upon perusal thereof, they might report to me what should occur to them upon each article or condition. Which being done, and several points remaining upon this examination undetermined and controverted, I referred it back to another junta; and being fully informed of the whole matter, notwithstanding the objections made by both juntas, it being my intention to conclude and finish this assiento, with all possible condescension and complacency towards the Queen of Great Britain, I have thought fit, by my royal decree of the twelfth of this present month, to admit and approve of the said forty-two articles, contained in the forementioned draught, in the manner hereafter specified, with the enlargement, which over and above I have of my own free will resolved to grant to the said Company by my said decree. All which is in the manner following:

1. First then, to procure, by this means, a mutual and reciprocal advantage to the sovereigns and subjects of both crowns, her British Majesty does offer and undertake for the persons, whom she shall name and appoint, That they shall oblige and charge themselves with the bringing into the West-Indies of America, belonging to his Catholick Majesty, in the space of the said thirty years, to commence on the first day of May, one thousand seven hundred and thirteen, and determine on the like day, which will be in the year one thousand seven hundred and forty three *viz.* one hundred and forty four thousand negroes, *piezas de India*, of both sexes, and of all ages, at the rate of four thousand and eight hundred negroes, *piezas de India*, in each of the said thirty years, with this condition, That the persons who shall go to the West-Indies to take care of the concerns of the assiento, shall avoid giving any offence, for in such case they shall be prosecuted and punished in the same manner, as they would have been in Spain, if the like misdemeanors had been committed there.

2. That for each negro, *pieza de India*, of the regular standard of seven quarters, not being old or defective, according to what has been practised and established hitherto in the Indies, the assientists shall pay thirty-three pieces

³⁰ The text is that printed in 1713 by the queen's command. See Bibliography.

of eight (*escudos*) and one third of a piece of eight, in which sum shall be accounted to be, and shall be comprehended, all and all manner of duties of *alcavala*, *siza*, *union de armas*, *boqueron*,³¹ or any other duty whatsoever, of importation or regalia, that now are, or hereafter shall be imposed, belonging to his Catholick Majesty, so that nothing more shall be demanded; and if any should be taken by the governors, royal officers, or other ministers, they shall be made good to the assientists, on account of the duties which they are to pay to his Catholick Majesty, of $33\frac{1}{3}$ pieces of eight, as aforesaid, the same being made appear by an authentick certificate, which shall not be denied by any publick notary, thereunto required on the part of the assientists; for which purpose a general order (*cédula*) shall be issued in the most ample form.

3. That the said assientists shall advance to his Catholick Majesty, to supply the urgent occasions of the crown, two hundred thousand pieces of eight (*escudos*) in two even payments of one hundred thousand pieces of eight each, the first to be made two months after his Majesty shall have approved and signed this assiento; and the second at the end of two other months next after the first payment; which sum so advanced, is not to be reimbursed before the end of the first twenty years of this assiento, and then it may be deducted by equal portions in the ten last remaining years, after the rate of twenty thousand pieces of eight yearly, out of the produce of the duty upon negroes, which they are to pay in those years.

4. That the assientists shall be obliged to pay the aforesaid advance of two hundred thousand pieces of eight, in this court; as also from six months to six months, the half of the amount of the duties payable for the piezas of slaves, which they have agreed to import yearly.

5. That the payments of the said duties shall be made in the manner mentioned in the foregoing article, without any delay or dispute, or without putting any other interpretation upon it; yet, with this declaration, that the assientists shall not be obliged to pay the duties for more than four thousand negroes (*piezas de India*) yearly, and not for the remaining eight hundred, the duties payable for these last, during the whole thirty years of this assiento, being to be, as they are hereby given and granted to them the said assientists, by his Majesty, in the best form and manner possible, in consideration of the risques and interest that ought to be made good to the assientists, for the money advanced, and payment in this court of the duties for the said four thousand piezas.

6. That the said assientists, after they shall have imported the four thousand eight hundred negroes yearly, according to their contract, if they find it necessary for his Catholick Majesties service, and that of his subjects, to import a greater number, they shall have liberty to do it, during the first twenty five years of this contract; (for as much as in the five last years they shall import no more than the four thousand eight hundred agreed upon) with condition, that they shall pay no more than sixteen pieces of eight, and two thirds of a piece of eight, for all duties on each negro, *pieza de India*, which they shall import, over and above the said four thousand eight hundred, that being the half of thirty three pieces of eight, and one third abovementioned; and this payment also shall be made in this court.

7. That the said assientists shall be at liberty to employ, in this commerce for the carrying of their cargoes, her Majesty of Great Britain's own ships,

³¹ *Alcabala*, a sales tax, imposed on goods the first time they were sold after arrival in Europe; *siza*, a tax on comestibles; *unión de armas*, an impost on imported money, bars of gold, or silver bullion; the meaning of *boquerón* has not been discovered.

or those of her subjects, or any belonging to his Catholick Majesties subjects, (paying them their freight, and with the consent of their owners) navigated with English or Spanish mariners, at their choice, care being taken that neither the commanders of those ships employed by the assientists, nor the mariners do give any offence, or cause any scandal to the exercise of the Roman Catholick religion, under the penalties, and pursuant to the regulations established by the 1st article of this assiento. And also it shall be lawful for the said assientists, and they shall have power to introduce their black slaves contracted for into all the ports of the North Sea, and of Buenos Ayres, in any of the aforementioned ships, in like manner as has been granted to any former assientists; however always with this assurance, that neither the commanders nor seamen shall occasion any scandal to the Roman Catholick religion, under the penalties already mentioned.

8. That whereas experience has shewn it to be very prejudicial to the interest of his Catholick Majesty, and his subjects, that it hath not been lawful for the assientists, to transport their negroes into all the ports of India in general, (it being certain that the provinces which have not had them, endured great hardships for want of having their lands and estates cultivated, from whence arose the necessity of using all imaginable ways of getting them, even though it were fraudulently) it is made an express condition of this contract, that the said assientists may import and vend the said negroes in all the ports of the North Sea, and that of Buenos Ayres at their choice, (his Catholick Majesty revoking, as he does revoke, the prohibition contained in other former assiento's, to import them into any other ports, than those therein mentioned) with this restriction, that the said assientists may not import, or land any negro, except in those ports where there are royal officers, or their deputies, who may search the ships and their cargoes, and certifie the number of negroes that are imported. And it is provided at the same time, that the negroes which are carried to the ports of the Windward coast Sancta Martha, Cumana, and Maracaybo, shall not be sold by the said assientists, for more than after the rate of three hundred pieces of eight each, and for as much less as is possible, to encourage the inhabitants of those places to buy them; but as to the other ports of New-Spain, its islands, and Terra-Firma, it shall be lawful for the said assientists to sell them at the best prices they shall be able to get.

9. That the said assientists being allowed, for the reasons mentioned in the foregoing article, to import their negroes into all the ports of the North Sea, it is also agreed that they shall have power to do it in the river of Plata, his Catholick Majesty allowing them out of the four thousand eight hundred negroes, which, pursuant to this assiento, they are to import yearly, (in consideration of the advantages and benefits that will thereby accrue to the neighbouring provinces) to bring into the said river of Plata or Buenos Ayres, in each of the said thirty years of this assiento, to the number of one thousand and two hundred of those *piezas de India* of both sexes, to sell them there at such prices as they shall be able, shipping the same in four vessels, large enough to carry them; eight hundred of them to be disposed of at Buenos Ayres, and the remaining four hundred may be carried into, and serve for the provinces above, and kingdom of Chili, selling them to the inhabitants, if they will come to buy them in the said port of Buenos Ayres; it being hereby declared, that her Britannick Majesty, and the assientists in her name, may hold in the said river of Plata some parcels of land, which his Catholick Majesty shall appoint or assign, pursuant to what is stipulated in the preliminaries of the peace, from the time of the commencing of this

assiento, sufficient to plant, to cultivate, and breed cattle therein, for the subsistence of the persons belonging to the asiento, and their negroes; they shall be allowed to build houses there of timber, and not of any other materials, and they shall not throw up the earth, nor make any the least (or slightest) fortification: And his Catholick Majesty shall also appoint an officer, to his satisfaction, one of his own subjects, who shall reside upon the aforementioned lands, under whose command are to be all such things as relate to the said lands; and all other matters that concern the asiento, shall be under that of the governor and royal officers of Buenos Ayres, and the assientists shall not, on account of the said lands, be obliged to pay any duties during the time of the said asiento, and no longer.

10. In order to the carrying and introducing of black slaves into the provinces of the South-Sea, liberty is to be granted, as it is hereby granted to the assientists, to freight either at Panama, or in any other dock or port of the South-Sea, ships or frigates of about four hundred tons, little more or less, on board which they may ship them at Panama, and carry them to all the other ports of Peru, and no others on that side, and to man those ships with such seamen, and appoint such officers, both military and for sea, as they shall think fit, and may bring back the produce of the sale thereof to the said port of Panama, as well in fruits of the country, as in money, bars of silver, or ingots of gold, and so as they may not be obliged to pay any duties for the silver or gold, which they shall bring either upon importation or exportation, it being stamped, and without fraud, and appearing to be the produce of the negroes, for that the same is to be free of all sorts of duties, in the same manner as if the said money, bars of silver, and ingots of gold, belonged to his Catholick Majesty: And likewise leave is granted to the said assientists to send from Europe to Portobello, and from Portobello to Panama, by the river Chagre, or by land-carriage, cables, sails, iron, timber, and likewise all other stores and provisions, necessary for the said ships, frigats or *barcoluengo's* and for the maintaining the same; provided that they shall not be allowed to sell, or trade in the said stores, in the whole nor in part, under any pretence whatsoever; for that in such case they shall be confiscated, and as well the buyers as the sellers, shall be punished according to law, and the assientists shall be, from that time forward, absolutely deprived of this privilege, unless it shall appear that they had obtained leave for the sale thereof from his Catholick Majesty. And it is farther provided, that when the term of this asiento is ended, the said assientists shall not be allowed to make use of the said ships, frigots, or barks, to carry them to Europe, because of the inconveniences that might ensue.

11. The said assientists may make use of English or Spaniards at their choice, for the management and direction of this asiento, as well in the ports of America, as in the inland places, his Catholick Majesty dispensing for that end, with the laws which forbid strangers entring into or inhabiting in that country; declaring and commanding that the English, during the whole time of this asiento, shall be regarded and treated as if they were subjects of the crown of Spain, with this restriction, that, there shall not reside in any one of the said ports of the Indies, more than four or six Englishmen; out of which number the said assientists may chuse such as they shall think fit, and shall have occasion to send up into the country, where negroes are allowed to be carried, for the management and recovery of their effects; which they shall perform in the most convenient manner, and that which they shall think best, under the regulation mentioned in the 1st article, without any hindrance or disturbance from any ministers civil or military, of what degree

or quality soever, under any pretence, unless they can be charged with acting contrary to the established laws, or to the contents of this assiento.

12. That for the better management of this assiento, his Catholick Majesty will be pleased to grant, that as soon as the peace is proclaimed, her Britannick Majesty may send two ships of war, with the said factors, officers and others, who are to be employed in this service, giving first a list of the names, both of the one and the others, that are to go ashore in all the ports, where they shall be allowed to settle and regulate their factories, as well that they may go with the greater conveniency and security, as that they may provide all things necessary for the receiving the vessels that shall go with negroes, which being obliged to go to take the blacks in upon the coast of Africa, and thence transport them to the ports of the Spanish America, it would be very incommodious as well as unprofitable, for the factors and others employed, to go on board the said ships made use of in those voyages, and yet it is indispensably necessary that houses be prepared before hand for them to dwell in, and all other provisions made which they shall want; and for the transporting of the factors, and others, belonging to the Company, to Buenos Ayres, a vessel of a middling burthen shall be allowed; and it is hereby declared, That as well this vessel, as the two ships of war, are to be visited and searched in the several ports by the royal officers, who may seize their merchandize, if they carry any; and farther the said ships shall be furnished with necessary provisions for their return, at a reasonable rate.

13. The said assientists may nominate, in all the ports and chief places of America, judges conservators of this assiento, whom they may remove and displace, and appoint others at pleasure, in the manner allowed to the Portuguese in the eighth article of their assiento, provided always that they shew a justifiable cause for their so doing, before the president, governor, or audience of such district, which shall be by them respectively approved, so as this nomination may fall on some of his Catholick Majesties ministers; which said judges are to have cognizance, exclusive of all others, of all causes, affairs and suits, relating to this assiento, with full authority and jurisdiction: All *audiencias*, ministers and tribunals, presidents, captains general, governors, *corregidores*, great *alcaldes*, and other judges and justices whatsoever, the viceroys of those kingdoms included, being forbidden to meddle therewith, forasmuch as the said judges conservators are alone to have the cognizance of these causes and their incidents, from whose sentences an appeal (in such cases as the law allows) shall lye to the supreme council of the Indies, with this condition, that the said judges conservators may not demand or pretend to greater salaries than those the assientists shall think good to allow them for that service; and if any of them exact any more, his Catholick Majesty will order it to be restored. He will also grant that the president or governor of the said council for the time being, or the *decano* (eldest member) thereof, shall be protector of this assiento; and also that they may propose a minister of the same council (whom they shall think most proper) to be their judge conservator, exclusive of all others, with his Catholick Majesties approbation, in like manner as has been done in former assiento's.

14. It shall not be lawful for the vice-roys, audiences, presidents, captains general, governors, royal officers, or other tribunal or minister whatever, of his Catholick Majesty, to lay an embargo on, or detain the ships belonging to this assiento, nor to hinder them in their voyages, under any pretence, or for any cause or motive whatever, even though it should be to fit them out for war, or upon any other design; but on the contrary, they shall be obliged to afford them all the favour, assistance and succour, that the said assientists

or their factors shall desire, for the more speedy fitting out, dispatching, and lading of their said ships; and likewise the victuals, and all other things they shall stand in need of, for forwarding their voyages, at the current prices, with this warning, and under this penalty, that those who do otherwise, shall be obliged at their own proper costs, to make good and satisfie all the damages and losses, which the assientists may sustain by such impediment or detention.

15. Neither shall the vice-roys, presidents, captains general, governors, *corregidores*, great *alcaldes*, judges, and royal officers, or any other tribunal or officer whatsoever, take, seize, detain, or lay an embargo by violence, or in any other manner, under any pretence, or for any cause or motive whatsoever, (though never so urgent) on any of the stock, goods and effects that are the produce of this assiento, or belonging to the assientists, under the penalty of being punished, and paying, out of their own estates, the damages and losses that shall accrue thereby; Nor shall the said ministers search the houses or ware-houses of the factors or others belonging to this assiento, who are to enjoy this privilege and exemption, to prevent the scandal and discredit that attend such proceedings; unless in case it shall have been proved that there has been some fraudulent and prohibited importation, and then they may be searched, with the assistance of the judge conservator, herein absolutely required, who shall take care to prevent pilferings and embezzlements, that use to happen by the great number of soldiers and officers, that crowd to such places on those occasions; It being agreed, That if any such goods are found, they may be seized, but not the stock or effects of the assiento, which are to continue free; and if the factors are concerned in such offences, an account thereof shall be given to the junta, that they may be punished.

16. That the said assientists, their factors, and others belonging to them in the Indies, may employ in their service such mariners, carriers, and workmen, as they shall have occasion for, to load and unload their ships and vessels, upon a voluntary agreement made with them, and paying them such salaries and stipends as they shall have agreed for.

17. That the said assientists shall have liberty to load, at their choice, the effects they may have in the Indies, upon the ships of the *flota* or the *galeons*,³² to bring them into Europe, agreeing for the freight with the captains and owners of the said ships, or upon the vessels belonging to the assiento; which if they think it convenient, may come under convoy with the said *flotas* and *galeons*, or other ships of war belonging to his Catholick Majesty, who will be pleased to lay his express commands, both upon the one and the other of them, to admit and take them under their protection and safeguard, with this warning, that no sum whatever be demanded of them, by way of ordinary or extraordinary *indulto*,³³ or for their coming in company with the said fleet or *galeons*; and that the effects which shall come in them, and shall appear, by an authentick writing, to belong to the assientists, shall be free of all duties whatsoever, on their importation in Spain, seeing their stock is to be looked upon to have the same privilege as if it belonged to his Catholick Majesty; and it is forbid, that the said ships belonging to the assiento (which may come in company with the *flotas*) do bring on board them any Spanish passenger, or any effects of any subject of his Catholick Majesty.

18. That from the first day of May of this present year 1713, till they shall have taken possession of this assiento, nor after their taking such pos-

³² *Flota*, the merchant vessels of the "pilote fleet" of the King of Spain, bringing annually his silver and gold from Vera Cruz and Nombre de Dios; *galeons*, its armed convoy.

³³ Dues or composition on money or merchandise brought from America in the galleons.

session, it shall not be lawful for the French Guinea company, or any other person whatsoever, to introduce any negro slave into India; and if they do, his Catholick Majesty will declare, as by this present article he does declare, them to be confiscated and forfeited, in favour, and for the benefit of these assientists, to whom they shall remain, they being obliged to pay the duties for the negroes thus imported contrary to this article, as are regulated and settled by this contract, for which purpose, so soon as it is signed, circular orders, in the most ample form, shall be dispatched to America, that there be not any negroes for the account of the French company admitted into any of the ports, to whose agent the same shall be notified; and that this may be the more effectual and advantageous to the royal revenue, it is agreed, that when the said assientists shall have notice that any ship with negroes (not belonging to them) is come upon the coast, or entred into any port, they may fit out, arm, and send out immediately such vessels as they shall have of their own, or any others belonging to his Catholick Majesty, or his subjects, with whom they shall agree, to take, seize, and confiscate such ships and their negroes, of whatever nation or person they be, to whom the same shall belong; to which end the said assientists, and their factors, shall have liberty to take cognizance of, and search all ships and vessels that shall come upon the coasts of India, or into its ports in which they shall have reason to believe or suspect, that there are contraband negroes; Provided always that for the making of such searches, visits, and other proceedings before mentioned, they shall first have leave from the governors, to whom they shall communicate what occurs, and desire them to interpose their authority; Provided that peace shall be proclaimed before any thing of this can be done, or this assiento take place.

19. That the said assientists, their factors and agents, shall have power to navigate and import their negro slaves, according to their contract, to all the northern ports of his Catholick Majesties West-Indies, including the river of Plata, with prohibition to all others, whether subjects of the crown, or strangers, to carry and introduce thither any negroes, under the penalties established by the laws that relate to this contract of trade; and his Catholick Majesty obliges himself by his faith and royal word, to maintain the said assientists, in the entire and full possession and performance of all the articles thereof, during the time agreed on, without allowing or conniving at any thing that may be contrary to the punctual and exact fulfilling thereof, his Majesty considering it as his own concern; with this condition, that they shall not import into the said river of Plata, or Buenos Ayres, more than the twelve hundred piezas de negroes allowed by the 8th article.

20. That in case the said assientists be molested in the execution and performance of this assiento, and that their proceedings and rights be disturbed by way of suits at law, or in any other manner whatsoever, his Catholick Majesty declares that he will reserve to himself alone the cognizance thereof, and of all causes that may be moved thereupon, with an inhibition to all and whatsoever judges and justices to take to themselves the examination and cognizance of the said causes, or of the suits, omissions or defects that may happen in the performance of this assiento.

21. That whenever the ships of the said assientists, shall arrive in the ports of the Indies, with their cargoes of negroes, the captains thereof shall be obliged to certifie that there is not any contagious distemper amongst them, that the governor and royal officers may permit them to enter into the said ports, without which certificates, they shall not be admitted.

22. When the said ships shall have entred into any of the ports, they are to be visited by the governor and royal officers, and searched to the bottom, even to the ballast; and having landed their negroes in whole or in part, they may at the same time land the provisions, which they shall bring for their subsistence, laying them up in particular houses or magazines, having obtained leave of the ministers who had searched the said ships; to avoid by these means all opportunities of fraud or controversie; but they shall not land, import, or vend any goods or merchandize under any pretence or motive whatsoever; and if there should be any on board the ships, they shall be seized, as if they were found on shore, excepting only the said negro slaves, and the magazines of provisions for their subsistence, under the penalty, that those who are guilty, shall be severely punished, and their merchandize and effects confiscated or burnt, and they shall be declared for ever incapable of having any employment in the said assiento; and the officers and subjects of his Catholick Majesty who shall connive at the same, shall be severely punished also, all importation and trading in merchandize being absolutely forbidden and denyed to the said assientists, as being contrary to, and against the laws of these kingdoms, and the sincerity and good faith with which they ought to discharge the obligations they are under by this assiento. And his Majesty declares and ordains, that the merchandize which shall be so seized, as being fraudulently imported, shall be appraised and valued, and immediately burnt in some publick place, by order of the said governors and royal officers, and the captain or master of the said ship or vessel, shall be condemned to pay the price at which it was valued, though he should be guilty of no other fault, than of omission, in not taking care, that no such merchandize should have been put on board; but if they are accomplices, or delinquents, they shall be condemned to pay a forfeiture proportionable to their offence, severely punished, and declared incapable to hold thereafter any employment in the service of this assiento: And his Catholick Majesty will require from all his ministers and officers, an exact and strict account of the performance of what is above-mentioned; And it is declared that the ships, on board which the negroes shall be, or any provisions brought for their subsistence, shall not be lyable to the said forfeiture and confiscation, they being declared to remain free, as not being in fault; and the person or persons, who have charge of them, may go on with their traffick; and if the merchandize or goods seized do not exceed the value of one hundred pieces of eight (*escudos*) they shall be burnt without any remission (being first appraised) and the captain shall be condemned to pay the sum at which they were appraised, as a punishment for his neglect and omission, and if he does not pay down the value of what shall have been so seized, he shall be suspended and imprisoned till payment made; but if it be proved that he was not an accomplice, he shall be obliged to deliver up the person guilty, and in that case he shall be free.

23. That the victuals and other provisions which shall be put on shore for the subsistence of the negroes, shall not pay any duties of importation or exportation, or any others whatever, that now are, or hereafter may be imposed; but if the assientists buy or export them from the ports, then shall they be obliged to pay the duties established, in the same manner as his Catholick Majesties subjects ought to do; and it is declared, That if, of the provisions that were laid up in the warehouses, there should remain some, which could not be expended, and likely to perish, they may be sold, or carried to other ports to be disposed of, paying the duties there established; the whole, with the interposition and knowledge of the royal officers.

24. That the duties upon the negroes imported, are to be due from the day of their landing in any of the ports of the Indies, after the search made, and all matters regulated by the royal officers; and it is declared, That if any of the said negroes dye before they are sold, the assientists shall not thereby be quit of the obligation of paying the duties for those that dye, nor have any pretension to make upon that account; except only, that in case, upon making the searches, there be found any negroes dangerously ill, they may be landed for their recovery, and if these dye within the space of fifteen days, from the time of their being put on shore, the assientists shall not be obliged to pay any duties, in regard they were not landed for sale, but in order to recover their health in the said fifteen days; which being expired, if they shall be yet alive, then they shall become indebted for the duties for them, in like manner as for the rest, and shall pay them in this court, pursuant to what is agreed in the fifth article.

25. That after the assientists, or their factors, shall have settled the duties, and sold part of the loading of blacks, which they had brought to that port, they shall be allowed to carry the remainder to any other port, carrying certificates from the royal officers of having there accounted for the duties, that so the same may not be demanded of them again in any other port; And they may receive in payment for those they shall sell, money, bars of silver, and ingots of gold, which shall have paid the king's *quinto* without fraud, as also the produce of the country, which they may carry away, and embark freely, as well the money, bars of silver, and ingots of gold, as the other effects and fruits, as being the produce of the sale of the said negroes, without being obliged to pay any duties, except only those that shall be established in the places from whence those fruits and effects are brought, which they are allowed to receive in exchange, or for the value of their negroes, of whatever kind they be, upon sales made in this manner for want of money, which they may carry on board the vessels employed in this commerce, to such ports as they shall think fit, and sell them there, paying the accustomed duties.

26. That the ships which shall be employed by this assiento, may sail from the ports of Great Britain or Spain at the choice of the assientists, who shall give an account to his Catholick Majesty of what ships they shall dispatch yearly for the negro-trade, and the ports for which they are designed, and may return to either, with the money, bars of silver, gold, fruits and produce of the country, being the produce of the sale of their negroes, and they shall be under this obligation, that if the returns come into the ports of Spain, the captains and commanders shall give to his Catholick Majesties ministers an authentick register, by which it may appear what they have on board; and if they come back to Great Britain, they shall send over an exact account of their lading, that his majesty may be fully informed thereof; with this warning, that they may not bring over, in any of the said ships, any silver, gold, or other effects, than what shall be the produce of the sale of the negroes, nor any Spanish passengers, they being forbid to receive on board any merchandize or other effects, on account of his Catholick Majesties subjects in those dominions, without an express licence first obtained from his Catholick Majesty; and they consent, that if the captains, commanders and officers, do bring any such on board, without such licence, they shall be declared guilty, and punished as having defrauded his Majesties customs, and transgressed against the contents of this article, and the orders which his Majesty shall have been pleased to give for the execution thereof, and for the avoiding of such frauds in the ports of the Indies, so that the offenders, being convicted thereof, shall be constantly punished.

27. If it should happen that the ships of this assiento should be fitted out as ships of war, and should take any prizes from enemies of either crown, or from the pirates that usually cruize and plunder in the seas of America, they may bring them into any port belonging to his Catholick Majesty, where they are to be admitted; and the said prizes being declared good and lawful, the captors shall not be obliged to pay greater duties, upon the entry of their prizes, than what are established and payable by the natural subjects of his Majesty; and it is declared, that if there should be any negroes on board such prizes, they may sell them in part of the number they have engaged to furnish, as likewise the victuals and provisions that should be over and above what is needful for their subsistence; But this is not to extend to the merchandize and goods which they may take, the sale whereof is ever to remain prohibited: However such regard is had to their interests, that they are allowed to carry the said merchandize and goods so taken, to the ports of Carthagena or Portobello, and deliver them to the king's officers, who are to receive them, and make an inventory thereof, and lay them up in ware-houses, in the presence of the captors, where they are to be kept till the arrival of the *galcons*, and the time of holding the fairs in the said ports of Carthagena and Portobello; and then the king's officers are to take care that they be sold, with the interposition, and in the presence of the deputies of commerce, and the said captors, or their agents; for which purpose his Catholick Majesty is to give the necessary orders, as he does give them by this present article, and deducting a fourth part of the produce of the sale thereof, which is to belong to his Catholick Majesty, to be put into the royal coffers, and remitted to Spain, with a distinct account of the said produce, they are to deliver the three remaining parts of each prize, without the least delay to their captors, or their agents, deducting and retaining thereout all expences for their sale and warehouse-room, and satisfying, at the same time that these prizes are sold, the accustomed duties payable for the same to the royal exchequer. And for the preventing all manner of doubt and cavil, his Majesty declares, That the ships, ketches, and other vessels (thus made prize of) of whatever sort they be, with their arms, guns, ammunition, and all the furniture and tackle on board them, shall belong to the captors.

28. That whereas in the establishing and adjusting this assiento, a particular regard is had to the advantage that may thence accrue to their British and Catholick Majesties, and to their revenues, It is agreed and stipulated, That both their Majesties shall be concerned for one half of this trade, each of them a quarter part, which is to belong to them pursuant to this agreement: And whereas it is necessary that his Catholick Majesty (in order to have and enjoy the benefit and gain that may be obtained by this trade) should advance to the said assientists, one million of pieces of eight (*escudos*) or a quarter of the sum, which they shall judge necessary for the putting of this commerce into a good order and method, it is agreed and settled, That if his Catholick Majesty shall not think it convenient to advance the said sum, the aforementioned assientists do offer to do it out of their own money, upon condition, that his Catholick Majesty shall make good the interest out of what they shall be accountable for, to him, after the rate of eight per cent. yearly, commencing from the respective days of their laying out the said money, and to continue till they are reimbursed and satisfied, according to the account that shall be presented to him, that his Majesty may thus enjoy the profits that may accrue to him, which they oblige themselves to from this time; but in case they do not make any profit by reason of accidents or misfortunes, and that instead thereof they suffer losses; his Majesty will be obliged,

(as he does oblige himself from this time,) to cause them to be reimbursed so far as he is concerned, according to justice, and in such way as may be least prejudicial to his royal revenues. And his Catholick Majesty is to name two directors or factors, who are to reside at London, two more in the Indies, and one at Cadiz, that they may be concerned on his part, (together with those of her Britannick Majesty, and those that shall be interested,) in all the directions, purchases and accounts of this assiento, to whom his Catholick Majesty is to give proper instructions by which to govern themselves, particularly to those in the Indies, for the better avoiding all impediments and disputes which may happen.

29. That the said assientists are to give an account of their profits and gain at the end of the first five years of this assiento, with accounts taken upon oath, and certified by legal instruments, of the charge of the purchase, subsistence, transportation, and sale of the negroes, and all other expences upon their account; and also certificates in due form, of the produce of their sale in all the ports and parts of America, belonging to his Catholick Majesty, whither they shall have been imported and sold; which accounts, as well of the charge as the produce, are first to be examined and settled, by her Britannick Majesties ministers employed in this service, in regard to the share she is to have in this assiento, and then to be examined in like manner in this court; And his Catholick Majesties share of the profits may be adjusted and recovered from the assientists, who are to be obliged to pay the same most regularly and punctually, in pursuance of this article, which is to be of the same force and vigour as if it were a publick instrument, and under the regulation mentioned in the 28th article, concerning the factors which his Catholick Majesty is to appoint.

30. That if the amount of the gain, made during the first five years, does exceed the sum which the assientists are to advance, and shall advance for his Catholick Majesty, together with the interest of eight per cent. which is to be included and made good in the manner abovementioned, the assientists are to reimburse themselves in the first place, what they shall have advanced, with all the interest, and then to pay to his Catholick Majesty the remainder of the profit that shall come to his share, together with the duties upon negroes annually imported, without any delay or impediment; which practice is likewise to be observed and continued every five years successively, during the term of this assiento; and at the end thereof an account shall be given of the gain made in the last five years, in the same manner as is mentioned in relation to the first five years; so that his Catholick Majesty, and his ministers, whom he shall employ in this affair, may remain fully satisfied, pursuant to what is mentioned in the 28th article, concerning the factors which his Catholick Majesty is to appoint.

31.³⁴ That whereas the said assientists have offered by the 3d article of this contract, to advance two hundred thousand pieces of eight in the manner therein expressed, they shall not be reimbursed the same, till the end of the first twenty years of this assiento, as is mentioned in the said 3d article, nor shall they pretend to any allowance for the risque or interest of that sum; but if upon the account that is to be given by the assientists, at the end of the first five years, they shall appear to be gainers, they may reimburse themselves the sum, (or part thereof) which they shall have advanced for the

³⁴ For the Declaration made at Utrecht, July 13, 1713, concerning an error in this article, see below, Doc. 103.

quarter part, wherein his Catholick Majesty is interested in this assiento, as also the interest due to them on this account, pursuant to what is mentioned in the 28th article.

32. That from and after the determination and fulfilling of this assiento, his Catholick Majesty does grant to the assientists the space of three years, to adjust their accounts, and gather in all their effects in the Indies, and make up a balance of the whole, during which term of three years, the said assientists, their factors, agents, and others employed by them, shall enjoy the same privileges and immunities as are granted to them for the term of this contract, for the free entrance of their ships and vessels in all the ports of America, and exportation of such effects as they may have there, without any alteration or restriction whatsoever.

33. That all the debtors to the assientists shall be compelled and forced to pay their debts, by taking them and their goods in execution, these debts being considered upon the same foot as those due to his Catholick Majesty himself, who declares them as such, that they may be the more effectually recovered.

34. That it being requisite for the support and subsistence of the negro slaves, who shall be set on shore in the ports of the West-Indies, as likewise of all the persons employed in this commerce, to keep constantly magazines filled with clothing, medicines, provisions, and other necessaries, in all the factories that shall be established, for the more easie and better management of this assiento, as also with all naval stores, for the repairing of, and furnishing the ships and vessels employed in its service, the assientists trust that his Catholick Majesty will please to allow them, from time to time, to bring from Europe or her Britannick Majesties colonies in North America, directly to the ports and coasts of the Northern Sea of the Spanish West-Indies, where there shall be royal officers, or their deputies, and likewise to the river of Plata or Buenos Ayres, clothing, medicines, provisions, and naval stores, for the use only of the assientists, their negroes, factors, servants, mariners, and ships; and they may import the same in small vessels, of about one hundred and fifty tons, (and not in those wherein the negro slaves are carried) of which and their cargoes, they are, at the time of their departure, to send an account to the Council of the Indies, and to lay before it a declaration of the factors, of what goods the loading consists, none of which shall be sold, under penalty of confiscation and severe punishment to be inflicted on the offenders, unless it be, in the case of an urgent necessity, for a Spanish ship, the captain whereof, in order to his return home, may be obliged to buy the same as he can agree with the factors.

35. For the refreshing and preserving in health the negro slaves, which they shall import into the West-Indies, after so long and painful voyage, and to prevent any contagious illness or distemper amongst them, the factors of this assiento shall be allowed to hire such parcels of land as they shall think fit, in the neighbourhood of the places where the factories shall be established, in order to cultivate the said lands, and make plantations, in which they may raise fresh provisions for their relief and subsistence; which cultivating and improvement is to be performed by the inhabitants of the country, and the negro slaves, and not by any others, nor may any ministers of his Catholick Majesty hinder them, provided they keep to this rule.

36. That leave shall be granted to the assientists to send a ship of three hundred tons to the Canary Islands, and to carry from thence such fruits as are customarily taken on board there, for America, pursuant to what was allowed to Don Bernardo Francisco Marin by the 26th article of his assiento,

and by the 21st article of the assiento of the Guinea Company of Portugal, for one time only during the continuance of this assiento.

37. That orders shall be dispatched for the publication in all the ports of America, of an *indulto* for the negroes unduly imported from the day that this assiento is to take place, with free liberty to the factors to lay an *indulto* on them at what time and price they shall think fit; and that the produce of this *indulto* shall be applied to the benefit of the assientists, who shall be obliged to pay to his Catholick Majesty the regular duties of thirty-three pieces of eight, and one third of a piece of eight, for each negro, at the time that the *indulto* is laid.

38. That for the better and more expeditious dispatch of this affair, his Majesty shall be pleased to establish a junta of three ministers, such as he shall think most proper, who with the assistance of the fiscal and secretary of the Council of the Indies, shall hear and take cognizance, (exclusive of all others) of all matters and causes relating thereunto, during the time that is stipulated; and that the said junta shall lay before his Majesty what shall occur to them, in the same manner as was practised for the French company.

39. That all the concessions in former assientos to Don Domingo Grillo, the consulado of Seville, Don Nicolas Porcio, Don Bernardo Marin y Gusman, the companies of Portugal, and France, not being contrary to the contents of this contract, shall be understood and declared to be in its favour, as if they were herein literally inserted; and that all the orders that have at any time been dispatched in favour of those forementioned assientists, shall be granted to these, whenever they shall ask them, without any doubt or difficulty.

40. That in case of a declaration of war (which God forbid) of the crown of Great Britain against that of Spain, or of Spain against Great Britain, this assiento is to be suspended; however, the assientists are to be suffered to remove with all security, (during the space of one year and an half, from the time of the declaration of such rupture) all their effects, and to bring them home freely in such of their ships as shall then happen to be in the ports of the Indies, or in those belonging to the Spaniards; with this condition, that if they should bring them to the ports of Spain, they may freely carry them away again, as if the assiento was yet in force, it being first made to appear, that they are the produce of the negro trade; And it is farther declared, That if it should happen that the crowns of Spain and England, or either of them, joyntly or separately, shall enter upon a war with other nations, in such case the ships employed in this assiento are to have passes and carry flags with different arms from what are usually born by the English or Spaniards, such as his Catholick Majesty shall please to make choice of, the like to which are not to be granted to any other vessels than those belonging to this trade, which shall protect them from being molested or assaulted by the ships of such nations as shall be, or declare themselves enemies to the two crowns; in order to the securing of which, her Britannick Majesty will take upon her to solicit and obtain that in the ensuing general treaty of peace, an express article may be inserted, that all the princes may take notice of it, and may be obliged to command their subjects to govern themselves accordingly, and to observe the same exactly, and punctually.

41. That all the contents of this present contract, and the conditions therein inserted, as likewise all that shall be annexed thereunto, or depending thereon, shall be fulfilled, and sincerely and punctually executed, so as it may not be obstructed by any pretence, cause, or motive whatsoever; for which purpose his Majesty is to dispense, (as he does hereby dispense) with all laws, ordinances, proclamations, privileges, establishments, usages, and customs,

contrary hereunto, wherever the same may be subsisting in any of the ports, places, and provinces of America, belonging to his Majesty, for the term of thirty years, during which this assiento is to continue, and the three years farther, which are allowed to the assientists, for the getting in their effects, and balancing their accounts, as has been already mentioned; which laws, &c. are, however, to continue in all their force and vigour, in all other cases that do not relate to this contract, and in all time coming, after the expiration of the thirty three years thereof.

42. And finally his Majesty grants to the said assientists, their agents, factors, ministers, officers civil and military, as well at sea as at land, all the favours, freedoms, privileges and exemptions, that have ever been granted to any former assientists, without any restriction or limitation, so far as they are not contrary to what is agreed and expressed in the foregoing articles; which the assientists do likewise oblige themselves to accomplish and execute entirely and punctually.

Additional Article.

Besides the foregoing articles stipulated on behalf of the English company, his Catholick Majesty, considering the losses which former assientists have sustained, and upon this express condition, that the said company shall not carry on, nor attempt any unlawful trade directly nor indirectly, under any pretence whatsoever; and to manifest to her Britannick Majesty, how much he desires to pleasure her, and to confirm more and more a strict and good correspondence, has been pleased, by his royal decree of the 12th of March, in this present year, to allow to the company of this assiento, a ship of five hundred tons yearly, during the thirty years of its continuance, to trade therewith to the Indies, in which his Catholick Majesty is to partake a fourth part of the gain, as in the assiento, besides which fourth, his Catholick Majesty is to receive five per cent. out of the neat gain of the other three parts which belong to England, upon this express condition, that they may not sell the goods and merchandizes, which each of those ships shall carry, but only at the time of the fair;³⁵ and if any of these ships shall arrive in the Indies, before the *flotas* and *galeons*, the factors of the assiento shall be obliged to land the goods and merchandize (with which they shall be laden) and put them into ware-houses that shall be locked with two keys, one of which to remain with the royal officers, and the other with the factors of the company, to the end the said goods and merchandize may be sold during the continuance of the said fair only; and they are to be free of all duties in the Indies.

Conclusion.

And whereas my will and pleasure is, that all that is contained in each of the articles and conditions (expressed in the above draught herein inserted) and that which is the last of all (being added thereto of my own free will) should have its full effect, I do by these presents approve and ratify the same, and command that it be observed, fulfilled and executed, literally, in the whole and throughout, according to the contents of it, and of every article thereof, and what is therein declared, and that nothing be done or acted, or be any ways suffered to be done or acted, contrary to the tenor and form thereof, dispensing (as I do for this time dispense) with all laws and prohibitions that may be contrary thereunto; and I promise and assure, upon my faith and

³⁵ At Nombre de Dios.

royal word, that provided the company of England perform this contract on their part, so far as concerns them, and as they are obliged, I will perform it on my part: in witness whereof I have granted to the Lord Lexington, her Majesty of Great Britain's minister in this Court, the present writing and acceptance of this contract, corresponding with its entire performance and validity; which, in pursuance of my royal command, has been made out by the register's office of the chamber of my Council of the Indies, the twenty sixth day of his present month and year; and I will, that for the execution of all that is mentioned in this assiento, all the *cédulas*, despatches and orders, required for the entire effect and fulfilling thereof, be issued in their proper time: And the comptrollers of accounts, who attend my said council, are to take notice of these presents. Given at Madrid the twenty sixth day of March, one thousand seven hundred and thirteen.

I THE KING.

By the command of our lord the king,

Don BERNARDO TINAGUERO DE LA ESCALERA.

Your Majesty does hereby approve and ratify the assiento adjusted with the company of England, for the importation of negro slaves into the Indies, for the term of thirty years, in the manner mentioned in the articles above inserted.

*Preliminary treaty of peace between Spain and Great Britain,
concluded at Madrid, March 27, 1713, N. S.*

INTRODUCTION.

The signing of the *assiento* by Philip V. on March 26, 1713,¹ prepared the British ambassador at Madrid, Lord Lexington, to conclude a preliminary treaty of peace with Spain on the following day. By this treaty Lexington's eleven demands, described above,² were all granted except the ninth (concerning the exemption of British goods from duties), from which, as has been said, Queen Anne had agreed to desist.³ Although certain provisions of the articles respecting Gibraltar, Minorca, and the Catalans (arts. 4-8, 15) were far from satisfying Lexington, he felt obliged to accord them in order to save the treaty.⁴ He also accepted, with reluctance, article 21, providing for a British guaranty of the possession by the *Princesse des Ursins* of a principality in the Low Countries; for he believed the aid of that all-influential *camarera mayor* to be essential to the harvesting of the fruits of the *assiento* and of the peace.⁵ Another concession to Spain was Great Britain's promise to maintain the Guipuzcoans and other Spaniards in their liberty of engaging in the Newfoundland fishery (art. 20) although the Council of Trade and Plantations had reported that they had not found that any Spaniards had fished in Newfoundland waters as of right.⁶ Great Britain also agreed to prohibit any British ships, except those of the *assientists*, *i. e.*, the South Sea Company, from sailing to the South Seas or trading elsewhere in the Indies, and she forbade the *assientists* to engage in any illicit commerce.

Spain, on the other hand, promised that she would not permit the French or any other foreign nation to trade in the Indies, and would confirm this prohibition by a separate article in the treaties of peace (art. 13). She would also pay attention to Lexington's two memorials regarding some commercial articles (art. 12). A separate article provided that both the British and the Spanish governments would endeavor to prevent any further dismemberment of the Spanish monarchy, and that Philip V. would enter into a new alliance between Great Britain, Spain, and Portugal for securing the Portuguese crown.

¹ Doc. 98.

² See above, p. 167.

³ See above, Doc. 98, p. 168, and art. 10, below.

⁴ *Duke of Portland MSS.*, V. 272, 275; Lexington to Dartmouth, Apr. 17, 1713, P. R. O., St. Pap. For., Spain, no. 80.

⁵ *Duke of Portland MSS.*, V. 276.

⁶ *Cal. St. Pap. Col.*, 1712-1714, no. 252.

In general the treaty revealed that Great Britain had failed of her aim to gain additional territory in Spanish America; that while preserving her old rights there she had failed to acquire new commercial advantages other than the considerable ones accorded to the assentists; and that she had succeeded in preventing the French, Dutch, or other nations from securing as great privileges in those parts as she herself would enjoy.

BIBLIOGRAPHY.

Text: MS. The original of the separate article is in the London P. R. O., St. Pap. For., Treaties, no 472. The original of the treaty has not been found.

Text: Printed. A. del Cantillo, *Tratados de Paz y de Comercio* (1843), pp. 70-75; C. Calvo, *Recueil des Traités* (1862-1868), II. 102-106 (arts. 9-14 only).

References: Contemporary and early writings. Hist. MSS. Comm., *Duke of Portland MSS.*, V. 272, 275, 276, 293; G. Parke, *Correspondence of Bolingbroke* (1798), III., *passim*.

References: Later writings. G. Scelle, *La Traite Nègrière* (1906), II. 527 ff., 570-572; Dahlgren, *Relations Commerciales et Maritimes entre la France et les Côtes de l'Océan Pacifique* (1909), pp. 718-724.

TEXT.⁷

Cuanto mas sangrienta ha sido esta guerra y mas calamitosa para los pueblos, tanto mas han prevalecido en el jeneroso ánimo de su Majestad católica los fervorosos deseos de facilitar á sus fieles y amados vasallos la mas cumplida y permanente tranquilidad; y hallándose la reina de la Gran Bretaña en el mismo ánimo y plausibles dictámenes por el bien de sus vasallos, deseando ambos continuar y perfeccionar los pasos que han dado para restablecer sólida y permanentemente la paz y quietud universal de la Europa, atajando al mismo tiempo la efusion de tanta sangre y las demas calamidades que por la presente guerra ha padecido la cristiandad, y siendo igualmente grande en sus Majestades la inclinacion de restablecer, aumentar, y conservar la grande union y buena correspondencia que en los siglos pasados ha prevalecido entre las dos coronas y las naciones española é inglesa; han tenido por conveniente que á este efecto se delibere y ajuste un tratado en esta córte, á cuyo fin ha dado su Majestad católica sus poderes en la forma mas ámplia y suficiente á don Isidro de la Cueva y Benavides, marqués de Bedmar, comendador del Orcajo de las Torres en la órden de Santiago, caballero de la órden del Espíritu Santo, gentil hombre de la cámara de su Majestad católica, de su consejo de estado, presidente de el de órdenes y ministro de la guerra: Y su Majestad británica ha provisto asimismo de sus poderes ámplios y suficientes para el espresado efecto al señor de Lexington, baron de Averham, par de la Gran Brentaña y consejero de estado de su Majestad británica; quienes han convenido en los artículos incluidos en el presente tratado, los cuales deben servir de base y fundamento al tratado de paz entre las dos coronas de España y de la Gran Bretaña.

I. Que su Majestad Católica reconocerá la sucesion á la corona de la Gran Bretaña segun el establecimiento presente, declarado por acto del parlamento en la serenísima casa de Hanover.

⁷ The text of the treaty is taken from A. del Cantillo, *Tratados de Paz y de Comercio*, pp. 70-75, except the secret article, apparently unprinted hitherto, which is taken from the original in the London P. R. O., St. Pap. For., Treaties, no. 472.

2. Que su Majestad Católica no renunciará en el tratado de paces á los estados de Italia y de Flandes que quedan al archiduque, á menos que este príncipe renuncie reciprocamente á los otros reinos y estados de España y de las Indias.

3. Que todos los tratados antiguos entre las dos coronas de España y de la Gran Bretaña serán renovados; y se convendrá en los ajustes y pactos necesarios para unir las dos naciones mas estrechamente que nunca lo han estado.

9. Que su Majestad Católica concede á su Majestad británica y á la nacion inglesa el pacto del asiento de negros, por el término de treinta años consecutivos, que empezarán á correr desde 1.^o de mayo proximo de 1713 con las mismas condiciones que lo han tenido los franceses y de que han gozado ó podido gozar; ⁸ y ademas de esto con una extension de terreno que por su Majestad católica se señalará y destinará á la compañía del referido asiento en el Rio de la Plata, el cual terreno ha de ser á propósito y suficiente para poder refrescar y guardar en seguridad sus negros hasta que se hayan vendido, como tambien para que los navios de la compañía, puedan abordar y mantenerse con seguridad; pero su Majestad católica podrá en el referido paraje ó terreno establecer un oficial para invigilar á que no se practique ni se haga cosa alguna contra su real servicio, y estarán sujetos á la inspeccion de este oficial de su Majestad católica todos los interesados de la referida compañía, y generalmente todos que ella empleare en lo concerniente á este asiento, y en caso que sobrevenga alguna duda, disputa ó dificultad entre el referido oficial y los directores de la compañía, se remitirá y apelará á la decision del gobernador de Buenos Aires; y ademas de todo lo referido ha venido su Majestad católica en conceder á la dicha compañía otras considerables ventajas que mas ampliamente se espican en el tratado del mencionado asiento ⁹ que se ha arreglado y concertado con milord Lexington, á quien se ha entregado al tiempo de firmarse el presente tratado, del cual hace parte el del asiento.

10. Que habiendo su Majestad británica considerado el gran perjuicio que padecerian los derechos y rentas de su Majestad católica, si se pusiese en práctica la exencion concedida por la Francia en los preliminares de 8 de octubre de 1711, ¹⁰ y que se supone importa un quince por ciento sobre las mercaderias que produce la Gran Bretaña y se fabrican en ella, y que asimismo esta exencion ocasionaria frecuentes embarazos y dificultades entre sus vasallos y los oficiales de las aduanas y otros de su Majestad católica en su ejecucion, lo que pudiera en adelante entibiar ó alterar la estrecha union y buena correspondencia que su Majestad británica desea restablecer y mantener con la corona de España, ha venido su Majestad británica en desistir enteramente, como desiste, de la referida exencion ofrecida por la Francia de los derechos de quince por ciento en las mercaderias que produce la Gran Bretaña y se fabrican en ella.

11. Su Majestad católica conviene en que los súbditos de su Majestad británica gozaran de todas las ventajas, derechos y privilegios que han sido concedidos á la nacion inglesa y que esta gozaba en el tiempo que murió el señor rey Carlos II., sea en virtud de los tratados de paces ó de comercio por cédulas y actos particulares, y especialmente por el tratado de comercio del año 1667, ¹¹ con los privilegios concedidos á los mismos ingleses en el año de 1645; como tambien por el tratado de comercio de la América del año

⁸ The French asiento is printed as Doc. 89.

⁹ Doc. 98.

¹⁰ Doc. 96, art. 7.

¹¹ Doc. 55, in vol. II. of this series.

1670,¹² y se formará luego un arancel por el cual se reglarán los derechos que deberán pagar las mercadurias á su entrada en España, los cuales no podrán esceder á los que estaban establecidos en el tiempo que murió el señor rey Carlos II., y ademas de esto concederá su Majestad católica á la nacion inglesa todas las demas esenciones, ventajas, derechos y privilegios que están concedidos y no revocados, ó que en adelante se concedieren á los súbditos de Francia ú de otra cualquiera nacion.

12. Su Majestad católica atenderá asimismo á las instancias que milord Lexington ha hecho por dos memorias que ha presentado, solicitando la esplicacion y estension de algunos articulos del comercio, tanto en Europa como en la América.¹³

13. Su Majestad católica promete que no concederá en adelante licencia ó permiso alguno á ninguna nacion extranjera, sin escepcion de alguna por qualquiera razon ó pretexto que haya para ir á comerciar en las Indias españolas; y su Majestad católica hará restablecer el referido comercio en conformidad y en el pie de los antiguos tratados y las leyes fundamentales de España tocante á las Indias, por las cuales leyes está absolutamente prohibida la entrada y el comercio en las Indias á todas las naciones; y reservado únicamente á los españoles súbditos de su Majestad católica; pero no podrán los mismos españoles traficar en Indias indirectamente con licencias ó permisos particulares concedidos debajo de sus nombres para otra ninguna nacion extranjera por cualquier motivo ó pretexto que sea, consintiendo asimismo su Majestad católica en que todo lo referido en este articulo sea confirmado y estipulado, y que esta defensa ó prohibicion general sea tambien renovada y confirmada por un articulo particular y especifico en los tratados de paces que se han de hacer con todas las naciones que estan en guerra.

14. Su Majestad británica ha convenido en promulgar desde luego las mas fuertes prohibiciones y debajo de las mas rigurosas penas á todos sus súbditos á fin que ningun navio de la nacion inglesa se atreva á pasar a la mar del Sur ni á traficar en otro paraje alguno de las Indias españolas, escepto solamente los de la compañía del asiento de negros, los cuales lo podrán ejecutar unicamente para el comercio de los negros solamente en los puertos del norte y en Buenos-Aires, arreglado á las condiciones del referido asiento, sin poder hacer otro ningun comercio ilícito debajo de la mismas penas, y su Majestad británica promete que esta prohibicion de su Majestad católica y la que se hará por las otras naciones serán estipuladas en los tratados de paces por un articulo separado y especifico.

20. Su Majestad británica promete que mantendrá á los Guipuzcoanos y á los demas súbditos de su Majestad católica en todos sus derechos de cualquier naturaleza que sean, y en la libertad en que han estado hasta ahora de la pesca de ballena y de abadejo de Terranova, y para su mas exacta observancia se formará sobre esto un articulo en el tratado de paz.

22. El presente tratado será aprobado y ratificado por su Majestad Católica y su Majestad Británica, y los actos de la ratificacion se entregarán reciprocamente en el término de seis semanas y antes si fuere posible, contándole desde la fecha de este tratado, Y para que conste y haga fé todo lo referido, hemos firmado el presente tratado en virtud de nuestros respectivos poderes, y hecho poner en él los sellos de nuestras armas. En Madrid á 27 de marzo de 1713.—El Marqués de BEDMAR.—LEXINGTON.

¹² Doc. 65, in vol. II. of this series.

¹³ Cf. Doc. 105.

Separate Article.

Par dessus ce qui à esté convenu et stipulé par le traité qui a esté fait en datte d'aujourd'huy le vingt septiesme de mars de l'année mil sept cent et treize, entre Milord Lexington, en vertu des pouvoirs qu'il a de sa majesté Britanique, et le marquis de Bedmar, ayant pareillement ses pouvoirs de sa Majesté Catholique, il â esté convenû, et stipulé aussi par le present article separé, qui aura la mesme force et viguer, comme s'il fût inseré de mot à mot dans le susdit traité, que sa Majesté Britanique, maintiendra les mesures qu'elle à prises pour qu'aucune puissance, de celles qui sont en guerre, puissent demander à sa Majesté Catholique autre chose de plus pour la paix, et sa Majesté Catholique pourra se tenir ferme à nier, et refuser à quelle puissance que ce puisse estre, tout demembrement ulterieur de sa monarchie, et sa majesté Britanique promet aussi de diriger les choses de maniere, qu'elle empeschera tout demembrement ulterieur de la monarchie d'Espagne, et sa Majesté Catholique concourra aux sentiments que sa Majesté Britanique a pour former une nouvelle alliance entre les deux couronnes d'Angleterre et d'Espagne, et celle de Portugal, pour la seureté de cette derniere couronne; En foy de quoy, et en vertu de nos pouvoirs respectifs, nous les susdits avons signé le present traité de nos seings ordinaires, et y avons fait apposer le cachet de nos armes à Madrid ce vingt septiesme de Mars de l'année mil sept cent et treize.

LEXINGTON.

TRANSLATION.

The more sanguinary this war has been and the more calamitous for the nations, the more has the fervent desire prevailed in his Catholic Majesty's generous mind to promote the most complete and lasting peace for his faithful and beloved subjects; and the Queen of Great Britain being of the same mind and laudable sentiments in regard to her subjects' welfare, and both desiring to continue and perfect the measures that they have taken to re-establish solidly and permanently the peace and universal tranquillity of Europe, ending at the same time the great effusion of blood, and the other calamities brought upon Christendom by the present war, and their Majesties being equally inclined to re-establish, augment, and preserve the great union and good correspondence which in past centuries have prevailed between the two crowns, and the Spanish and English nations, they have deemed it desirable that for this purpose a treaty should be deliberated and adjusted in this court. For this purpose his Catholic Majesty has given his powers, in the most ample and sufficient form, to Don Isidro de la Cueva y Benavides, marquis de Bedmar, knight commander of the Orcajo de las Torres in the Order of Santiago, knight of the Order of the Holy Spirit, gentleman of the bedchamber of his Catholic Majesty, member of his Council of State, president of the Council of Orders, and minister of war, and her Britannic Majesty has likewise provided with her full and sufficient powers, for the aforesaid purpose, Lord Lexington, baron of Averham, peer of Great Britain, and her Britannic Majesty's councillor of state. These have agreed on the articles included in the present treaty, which should serve as basis and foundation for the treaty of peace between the two crowns of Spain and Great Britain.

1. That his Catholic Majesty will recognize the succession to the crown of Great Britain according to the present establishment, declared by act of Parliament, in the Most Serene House of Hanover.

2. That his Catholic Majesty will not renounce in the treaty of peace the states of Italy and Flanders, which remain to the Archduke, unless this prince reciprocally renounces the other kingdoms and states of Spain and the Indies.

3. That all the old treaties between the two crowns of Spain and Great Britain shall be renewed; and the covenants and contracts necessary to unite the two nations more closely than they have ever been, shall be agreed on.

9. That his Catholic Majesty concedes to her Britannic Majesty and to the English nation, the contract of the *assiento* of negroes, for the term of 30 consecutive years, which shall begin to run from the first of May next following, of the year 1713, under the same conditions by which the French have held it, and which they have, or might have enjoyed; and in addition with a tract of land, which his Catholic Majesty will appoint and assign to the Company of the said *assiento* in the Rio de la Plata. This tract must be suitable and sufficient for refreshing and securing their negroes, until they shall be sold, and likewise for the Company's ships to put in and be securely maintained. But his Catholic Majesty may establish an officer in the aforementioned place or ground, to watch that nothing is done or practised contrary to his royal service, and all those concerned in the aforesaid Company, and in general all those whom it shall employ in connection with this *assiento*, shall be subject to the inspection of this officer of his Catholic Majesty. In case that any question, dispute, or difficulty shall arise between the aforesaid officer and the directors of the Company, it shall be referred and appealed to the decision of the governor of Buenos Aires. In addition to all the aforesaid, his Catholic Majesty has consented to grant to the said Company other considerable advantages, more fully explained in the treaty of the said *assiento*, which has been adjusted and concerted with Lord Lexington, to whom it has been delivered at the time of the signing of the present treaty, of which the treaty of the *assiento* forms a part.

10. Her Britannic Majesty having considered how very detrimental it would be to the customs duties and income of his Catholic Majesty if the exemption conceded by France in the preliminaries of October 8, 1711, and supposed to amount to fifteen per cent. on goods of the growth and manufacture of Great Britain, were to be put into effect, and that the carrying into effect of this exemption would create frequent embarrassments and difficulties between her subjects and the customs officers and other officers of his Catholic Majesty, which might in future cool or alter the close union and good correspondence that her Britannic Majesty desires to re-establish and maintain with the crown of Spain, her Britannic Majesty has resolved to desist entirely, as she does desist, from the said exemption, offered by France, of the duties of fifteen per cent. on goods of the growth and manufacture of Great Britain.

11. His Catholic Majesty agrees that the subjects of her Britannic Majesty shall enjoy all the advantages, rights, and privileges that have been granted to the English nation and that it enjoyed at the time of the death of King Charles II., whether by virtue of the treaties of peace or of commerce, or by particular *cédulas* and acts, and especially by the treaty of commerce of the year 1667, with the privileges granted to the English in the year 1645; as likewise by the commercial treaty of America, of the year 1670. A book of rates, moreover, shall immediately be drawn up whereby shall be regulated the duties to be paid on goods upon their import into Spain, which shall not exceed those established at the time of the death of King Charles II. His Catholic Majesty will further concede to the English nation all the other exemptions, advantages, rights, and privileges, which have been conceded and not revoked, or which shall be conceded in future to the subjects of France or to any other nation whatsoever.

12. His Catholic Majesty will likewise give attention to the representations made by Lord Lexington in the two memorials that he has presented asking for the explanation and extension of some articles relating to commerce both in Europe and America.

13. His Catholic Majesty promises that he will not grant in future any license or permit to any foreign nation, barring none, for any reason or pretext whatsoever, to go for trade to the Spanish Indies. His Catholic Majesty will cause the said commerce to be re-established in conformity with and on the footing of the old treaties and the fundamental laws of Spain touching the Indies, by which laws ingress into the Indies and trade there are absolutely prohibited to all nations, and reserved to the Spanish subjects of his Catholic Majesty alone; but even the Spaniards themselves must not trade in the Indies indirectly for any foreign nation, with individual licenses or permits granted under their names for any motive or pretext whatsoever. His Catholic Majesty likewise agrees that the whole contents of this article shall be confirmed and stipulated, and that this general defense or prohibition shall be also renewed and confirmed by a separate and special article in the treaties of peace that are to be made with all the belligerent nations.

14. Her Britannic Majesty has agreed to publish immediately the strongest prohibitions to all her subjects, under the most rigorous penalties, that no ship of the English nation shall venture to pass to the South Sea, or to trade in any other region of the Spanish Indies, except only the members of the Company of the Assiento, who must confine their operations solely to the negro trade, only in the ports of the North and in Buenos Aires, conforming to the conditions of the said assiento, without being permitted to carry on any other illicit commerce, under the same penalties, and her Britannic Majesty promises that this prohibition of his Catholic Majesty, and that which shall be made by the other nations, shall be stipulated in the treaties of peace by a separate and special article.

20. Her Britannic Majesty promises to maintain the Guipuzcoans and the rest of his Catholic Majesty's subjects in all their rights of whatever nature, and in the liberty hitherto enjoyed by them of the Newfoundland whale and cod fishery, and for the more precise observance of this matter an article concerning it shall be drawn up in the treaty of peace.

22. The present treaty shall be approved and ratified by his Catholic Majesty and her Britannic Majesty and the acts of ratification shall be exchanged at the end of six weeks, or earlier if possible, reckoning from the date of this treaty. And to confirm and attest all the aforesaid, we have signed the present treaty, by virtue of our respective powers, and have caused it to be sealed with our arms. At Madrid, March 27, 1713.—The Marquis de BEDMAR.
—LEXINGTON.

Treaty of peace between Great Britain and France, concluded at Utrecht, March 31/April 11, 1713. Ratification by France, April 7/18, 1713. [Ratification by Great Britain, same date.]

INTRODUCTION.

After the suspension of the official activities of the Congress of Utrecht, near the beginning of April, 1712,¹ France and England negotiated apart from the other powers with three aims in view. In the first place they sought to agree on means for preventing the union of the French and Spanish crowns, and for satisfying certain British aspirations at Spain's expense. Negotiations for this latter purpose were finally centred in Madrid and London, and their results have already been described.² Secondly, the British and French negotiators tried to adjust treaties of peace and commerce³ between their own countries; thirdly, to frame conditions of peace for the other belligerents. We are mainly concerned here with their negotiations regarding provisions relating to North America in the Anglo-French treaties.

The offers of the French government made in reply to Great Britain's "specific demands" of March 5, which have already been described⁴ and were again presented early in April in the elaborated form of a *projet*,⁵ constituted part of a "General plan for peace".⁶ This plan also comprised the offers of France for the allies of Great Britain, "further demands" of

¹ See above, p. 160.

² See above, Introductions to Docs. 98 and 99.

³ For the treaty of commerce see below, Doc. 101.

⁴ See above, pp. 158-159.

⁵ French plenipotentiaries to King, Apr. 8, 1712, in Archives of the French Ministry of Foreign Affairs, Corr. Pol., Hollande, t. 234. The Latin text of art. 11 of the *projet* is in *Letters and Correspondence of Bolingbroke* (ed. Parke), III. 235. It is, *anglice*, substantially as follows: On the day when the ratifications of the peace treaty shall be exchanged the Most Christian King shall cause authentic documents to be delivered to the Queen of Great Britain, by virtue whereof it will be established that the island of St. Christopher, as well as the island of Newfoundland, with the town and fort of Placentia, and the other islands in the surrounding sea, and likewise Acadia, and also the town of Port Royal, otherwise called Annapolis Royal, and all other dependencies of the said lands and islands, in those regions, together with the dominion, ownership, possession, and all other rights over islands, lands, and places, acquired either by treaties or in any other way, which the Most Christian King, the crown of France, or any of its subjects, have had or have thought they had to the said islands—are ceded and transferred in perpetuity to the Queen of Great Britain and to her crown. This cession is made in such ample form and manner that the subjects of the Most Christian King shall be prohibited in future from fortifying any places in the said islands and adjacent lands or even from fixing their abodes there, or from fishing in the seas, bays, or other waters of these places.

⁶ The general plan is in Parke, *op. cit.*, II. 286-300 n.

Great Britain, both for herself and for her allies,⁷ and the "reply" of Louis XIV. to those "further demands".⁸

The provisions of the "general plan" relative to North America were as follows: the King of France offered to yield the island of St. Christopher to Great Britain. (This was in accordance with the seventh article of the preliminary terms of October, 1711.)⁹ He would also cede Newfoundland, on condition that the town of Placentia should be razed, and that the French should retain the right of fishing and drying cod on Newfoundland, in the places where they were accustomed to do so. (The eighth article of the preliminaries, while stipulating that discussion of the article on Newfoundland and other North American lands should be referred to the general peace conferences, provided that liberty to fish and dry cod on Newfoundland should be reserved to the French.)⁹ The small islands adjacent and nearest to Newfoundland would also be ceded to Great Britain, with the understanding that the island of Cape Breton and others in the Gulf of St. Lawrence and the mouth of the St. Lawrence River, which France actually possessed, should remain to the king. The king would also yield to Great Britain Acadia with Port Royal, and their dependencies, as well as Hudson Strait and Bay. The French who left these ceded countries should be permitted to take away their effects and the king might withdraw the cannon and military stores. Commissioners should be named by both sides after the peace to regulate within a year the boundaries between Canada or New France on the one hand, and Acadia and the lands of Hudson Bay on the other hand; and to adjust the indemnities claimed by either side for all wrongs (torts) suffered in violation of the law of peace and war. The boundaries having been defined, subjects of either crown should be forbidden to pass them, or to trouble the internal commerce of the subjects of the other nation, or to disturb the Indian nations, allied or subject to either crown.

In response to these proposals the British demanded further that Placentia should be left as it was, and that the cannon and military stores at Hudson Bay should remain to Great Britain. In his "reply" Louis XIV. consented to these demands regarding Placentia and Hudson Bay, but bid high for the recovery of Acadia, for he offered to surrender the West Indian islands of St. Martin and St. Bartholomew, and even to abandon the right of fishing and drying cod on the Newfoundland coast if in exchange the British would restore Acadia. In this case, the king would agree that the river St. George should be the Acadian boundary, as the English claimed. In case the British refused, Louis XIV., rather than break off negotiations, would still grant

⁷ The French plenipotentiaries at Utrecht, on Apr. 13, 1712, sent to Louis XIV. their offers to the British plenipotentiaries, together with the latter's "further demands", which apparently accorded with the instructions brought them by Thomas Harley earlier in the month. *Corr. Pol., Hollande*, t. 234, fols. 110 ff.

⁸ The "reply" of Louis XIV. to the "further demands" of the British was sent to the French plenipotentiaries at Utrecht in a letter of Apr. 20, 1712. *Corr. Pol., Hollande*, t. 234, fol. 133; same in *P. R. O., St. Pap. For., Treaty Papers*, no. 99.

⁹ See above, *Doc. 96*.

their demands respecting Placentia and the cannon and stores at Hudson Bay; but his offers to cede St. Martin and St. Bartholomew and to desist from his fishery rights in Newfoundland would be cancelled.

The British plenipotentiaries would not relinquish Acadia, but tried to secure in addition a part of the equivalent offered therefor. Having received the king's "reply", they demanded that the French fishery rights in Newfoundland be limited to the Little North, which they defined as the side of the island facing the St. Lawrence River. They also desired that the commissioners should regulate only damages claimed by the British in regard to Hudson Bay, and by either party for infractions of the laws of *peace* only, thus preventing the consideration of certain French claims relating to Nevis and Gambia. They even sounded the French in regard to Cape Breton.¹⁰

The settlement of North American questions was subordinated to the reaching of an agreement on measures for preventing the union of the French and Spanish crowns.¹¹ When St. John believed that that great matter was about to be arranged, he tried to wrest some additional sacrifices from Louis XIV. before finally consenting to the suspension of arms, so essential to France.¹²

Regarding North America, he set forth the queen's proposals—that the French should not only cede Acadia and Newfoundland (except the right to fish and dry fish in the Petit Nord), but should also hold Cape Breton in common with the British, and without fortifying either that island or those in the St. Lawrence Gulf or river-mouth, and should yield to the queen the cannon and military stores in all the forts and places in Hudson Bay and Strait.¹³

In answer to this memorial Louis XIV. agreed, on June 10, to cede to Great Britain, Newfoundland, with Placentia fortified, and the cannon and stores in Hudson Bay and Strait; but, returning to the preliminary articles of October, 1711, as a basis, he refused to accord the other proposals unconditionally. As in April however he tried to buy back Acadia, offering in exchange to yield to Great Britain the artillery and military stores in Placentia—which, he argued, were not necessarily comprised in the cession, but might be regarded as "movables"; the islands adjacent to Newfoundland; the entire Newfoundland fishery; and St. Martin and St. Bartholomew. He refused however to share Cape Breton, on the ground that it was impossible

¹⁰ French plenipotentiaries to King, Apr. 27, 1712, in Archives of French Ministry of Foreign Affairs, *tom. cit.*, fols. 181 ff., 190.

¹¹ King to plenipotentiaries, May 1, 1712, P. R. O., St. Pap. For., Treaty Papers, no. 99; St. John to Bishop of Bristol, May 24/June 4, 1712, in Parke, *op. cit.*, II. 333 ff. On the negotiations from March, 1712, regarding the union of the crowns, see above, Doc. 97, pp. 159 ff. On June 8 Louis XIV. wrote to his plenipotentiaries that the King of Spain's reply would decide the peace, and that the principal obstacles to the negotiation being removed, the other difficulties would be cleared up soon. Corr. Pol., Hollande, t. 235, f. 117.

¹² St. John to Bishop of Bristol, May 24/June 4, 1712, in Parke, *op. cit.*, II. 335 ff. The treaty for the suspension of arms, so far as it related to North America, is printed above, Doc. 97.

¹³ Parke, *op. cit.*, II. 337 n.; same, in English, in Cobbett's *Parl. Hist.*, vol. VII., col. cxlviii.

to maintain peace in places possessed by the French and British in common, and that the island would be essential for keeping open the mouth of the St. Lawrence River, and preserving Canada itself, in case of a future war with Great Britain. In view of this possibility he also wished to retain liberty to fortify his islands in the gulf and river of St. Lawrence.¹⁴

A week after the date of Louis XIV.'s answer, on June 6/17, the queen announced to Parliament the eagerly awaited "plan of peace". Declaring that she had made every effort to secure by the treaty the greatest possible advantages for British interest in North American trade, she stated that France agreed to restore the whole of Hudson Bay and Strait and to cede Newfoundland with Placentia, and Annapolis with the rest of Nova Scotia or Acadia.¹⁵

Early in August the British plenipotentiaries at Utrecht brought forward a *projet* that became the basis of the later discussions and of the eventual treaty.¹⁶ Articles 9-13 relating to North America were, in substance, as follows:

9. France shall restore to Great Britain Hudson Bay and Strait and the lands, seas, sea-coasts, rivers, and places situated therein and at present pos-

¹⁴ Parke, *op. cit.*, II. 359 n.; Cobbett's *Parl. Hist.*, vol. VII., cols. cl, cli. When the French plenipotentiaries at Utrecht learned of St. John's memorial and of the king's response they remarked to the Bishop of Bristol that he and Strafford had previously agreed that, since Cape Breton had always incontestably belonged to France and especially since the treaty of Breda, it was unnecessary to put it in question. Whereupon the bishop explained the enlargement of his demand on two grounds: (1) that the English merchants, most of whom were respectable and very greedy, were continually tormenting the queen about their interests; and (2) that it was important for her and for her Council to let every nation see the great advantages she would derive from this peace in comparison with the little that the preceding ministry had tried to obtain. Plenipotentiaries to King, June 20, 1712, Corr. Pol., Hollande, t. 235, ff. 178, 179.

¹⁵ Cobbett's *Parl. Hist.*, vol. VI., cols. 1141 ff.

¹⁶ The *projet*, received with the French plenipotentiaries' despatch of Aug. 8, 1712, is in Archives of the French Ministry of Foreign Affairs, Corr. Pol., Hollande, t. 236, fols. 290 ff. Articles 9-13 are as follows:

"9. Dictus Rex Christianissimus Sinum et Fretum de Hudson una cum omnibus terris, maribus, oris maritimis, fluviis, locisque in iisdem sitis, et a subditis Gallicis in praesentia possessis, regno et Reginae Magnae Britanniae restituet. Fortalitia pariter omnia, sive ante sive post Gallorum occupationem ibidem erecta, integra et non demolita, una cum omnibus in iisdem existentibus tormentis alioque apparatu bellico ut et aedificiis omnibus quo nunc sunt in statu subditis Britannicis commissionem ad eadem repetenda et recipienda a domina Magnae Britanniae Regina habentibus, intra duodecim menses a ratihabitione praesentis foederis, vel citius si fieri potest, bona fide tradentur. Cautum tamen esto quod Regis Christianissimi subditis ex dicti Sinus terris aliisque locis omnibus et singulis per haec pacta coronae Magnae Britanniae cedendis cum rebus et bonis suis mobilibus exeundi quoquoqueverum ipsis placuerit terrestri vel maritimo itinere, liberum omnino sit. Ex utraque autem parte consensus est de finibus inter dictum Sinum de Hudson et loca in oris St. Laurentii fluvii ad Gallos spectantia statuendis per commissarios utrinque quantocius nominandos intra annum decernere; quos quidem limites subditis tam Britannicis quam Gallicis pertransire aut alterutros sive mari sive terra adire, prohibitum omnino erit. Iisdem quoque commissariis in mandatis erit datum, ut limites pariter inter alias Britannicas Gallicasque colonias iis in oris describant statuantque.

"10. Altememoratus Rex Christianissimus Societati Anglicae in Sinum de Hudson mercaturam facienti, de damnis omnibus et spoliis coloniis ipsorum, navibus, personis et bonis per hostiles Gallorum incursiones et depredationes vigente pace illatis, eorum aestimatione facta per commissarios ad utriusvis partis requisitionem nominandos juxta normam justitiae et aequitatis fieri satis curabit.

"11. Dominus Rex Christianissimus eodem quo pacis praesentis ratihabitationes commutabuntur die, Dominae Reginae Magnae Britanniae litteras, tabulasve solemnes et

sessed by the French. All the fortresses, undemolished, together with the cannon, other military stores, and buildings shall be delivered to British commissioners within twelve months, at most, from the ratification of the present treaty. French subjects may withdraw with their movables, by land or sea, whithersoever they please, from the territory of the bay, and from all other places to be ceded to the British crown by these treaties. Boundaries between Hudson Bay and places pertaining to the French and bordering on the St. Lawrence River are to be determined within a year by commissioners to be appointed as soon as possible by both sides. British and French shall be forbidden to cross these boundaries, or to go to each other by sea or land. The said commissioners shall also be charged with determining the boundaries between the other British and French colonies in those parts.

10. The King of France will take care that the Hudson's Bay Company shall be indemnified for all damage and spoil suffered by its colonies, ships, persons, and goods from French incursions and depredations in time of peace, as estimated by commissioners to be appointed upon the demand of either party.

11. The King of France will take care that on the day of the exchange of ratifications of the peace treaty the documents shall be delivered to the Queen of Great Britain, by virtue whereof the island of St. Christopher shall be possessed in future by the British alone, likewise the whole of Nova Scotia

authenticas tradendas curabit quarum vigore Insulam Sancti Christophori per subditos Britannicos sigillatim dehinc possidendam, Novam Scotiam quoque sive Acadium totam, limitibus suis antiquis comprehensam, ut et Portus Regii urbem alias Annapolim Regiam dictam, caeteraque omnia in istis regionibus quae ab iisdem terris et insulis pendent unacum earundem insularum, terrarum et locorum dominio, proprietate, possessione, et quocumque jure sive per pacta sive alio modo quaesito, quod Rex Christianissimus, corona Galliae, aut ejusdem subditi quicumque ad dictas insulas, terras, et loca, eorumque incolas, hactenus habuerunt aut habere se existamarunt Reginae Magnae Britanniae ejusdemque coronae in perpetuum cedi constabit, et transferri idque tam amplis modo et forma, ut Regis Christianissimi subditis prohibuit in posterum sit in dictis insulis ac terris adjacentibus loca aliqua munire aut etiam sedem figere aut in earundem maribus, sinibus, aliisque locis ad litus Acadiae spectantibus piscaturam exercere.

"12. Quandoquidem insula Terrae Novae una cum parvulis eidem proximae adjacentibus insulis quotquot ibidem existunt per coronam Magnae Britanniae possessae olim fuerint, prout nunc temporis maxima ex parte possidentur, conventum igitur est quod eadem insula de Terra Nova, una cum praedictis parvulis insulis eidem adjacentibus, juris Britannici in posterum omnino erit, eumque in finem, Placentia urbs, et fortalitium, una cum tormentis et apparatu bellico ibidem existentibus, per Regem Christianissimum, commissionem ea in parte a Regina Magnae Britanniae habentibus, intra [blank] menses a commutatis hujus tractatus ratificationum tabulis, aut citius si fieri potest, cedentur et tradentur neque aliquid juris ad dictam insulam et insulas ullaque illius [aut] earundem partem Rex Christianissimus haeredes ejus aut successores aut subditi aliqui Gallici, ullo dehinc tempore in posterum sibi vindicabunt. Piscatura autem circa dictam insulam et libertas ibidem exiccandi pisces ita statuatur, ut alibi quam in regione dictae insulae, vulgo Le Petit Nord, ista libertate subditi Gallici uti et gaudere non debeant. Ad majorem hujus articuli illustrationem, conventum est quod insula Cap Breton dicta Gallici juris in posterum erit, una cum facultate locum aliquem in eadem insula pro lubitu munendi. Conventum similiter est, quod jus piscaturae piscesque in terra siccandi quo Galli in maribus ut et insula de Terra Nova olim et hactenus gavisii sunt, iisdem in posterum absque omni molestia manebit.

"13. Galliae subditi Canadam incolentes alique Quinque Nationes, sive Cantones Indorum Magnae Britanniae imperio subjectas, ut et caeteros Americae indigenas eidem amicitia conjunctos, nullo in posterum impedimento aut molestia afficiant. Magnae autem Britanniae subditi lacus fluviosque Ontario, Eries, Huron, Illinis appellatos, pariter ac regiones omnes iis circumjacentes commercii causa frequentandi libertate plena gaudebunt. Pari quoque cum libertate regionum istarum indigenae colonias Britannicas ad promovendum hinc inde commercium pro lubitu adibunt absque ulla ex parte subditorum Gallicorum molestia aut impedimento."

or Acadia, comprehended within its ancient boundaries, and also the town of Port Royal, or Annapolis Royal; and all the dependencies of the said lands and islands in those parts, together with the dominion, ownership, and possession of these islands, lands, and places, and all other rights obtained through treaties or otherwise which the French have had or have thought they had to these places and their inhabitants, are yielded and transferred to the British crown forever; and that in such ample manner that the French shall be prohibited for the future from fortifying any places or even dwelling in these islands or adjacent lands, or from fishing in the seas, bays, or other places pertaining to the coast of Acadia.

12. Whereas Newfoundland with the small islands nearest to it were formerly possessed by the British crown, as, for the most part, they still are, it is agreed that Newfoundland and these small adjacent islands shall for the future belong of right wholly to Great Britain, and to that end the town and fort of Placentia, with the cannon and military stores, shall be yielded up by the King of France to the British commissioners. Henceforth the French shall not claim any right to the said island or islands or to any part of them; and shall not have the liberty of fishing around Newfoundland, or of drying fish there except in the district called the Little North. Cape Breton shall hereafter belong of right to the French, who may fortify any place in that island. The French shall retain their right of fishing and drying fish on the seas and island of Newfoundland where they have hitherto enjoyed it.

13. French inhabitants of Canada and others shall not molest the Five Nations or cantons of Indians subject to Great Britain, or other American natives bound to her by friendship. British subjects shall enjoy full liberty of frequenting for the sake of trade the places and rivers called Ontario, Erie, Huron, and all the surrounding districts. The natives of these regions shall be equally free to go to the British colonies to promote trade in both directions without being hindered by the French.

These articles did not satisfy the French plenipotentiaries,¹⁷ who forwarded them to their home government with comments thereon. To the ninth article they proposed an addition to the effect that Englishmen claiming to have been despoiled of their immovables either at Hudson Bay or at Newfoundland might bring claims regarding these, as well as regarding movables, before the future commissioners.¹⁸ As to the tenth article, they desired that the commissioners for the Hudson's Bay Company's affairs should also adjust the matter of the capitulations of Nevis and Gambia. The twelfth article¹⁹ contained several expressions and provisions unacceptable to the French: (1) that Newfoundland "formerly belonged to England" (the British were willing to change the expressions which might attribute a right of first possession on either part); (2) the phrase "adjacent islands", instead of which the French suggested a limitation of the distance to half a league or so from Newfoundland; (3) the French refused the British pretension to the cannon

¹⁷ For the French plenipotentiaries' "observations" on the British *projet* see Corr. Pol., Hollande, t. 236, fols. 301 ff.

¹⁸ "Bien entendu que les Anglois qui pretendront avoir été depouillez de leurs biens immeubles, soit a la Baye d'Hudson, soit dans l'Isle de Terre-neuve, auront la liberté d'en porter leurs plaintes et leurs demandes en reparation, aussy bien que des effets mobiliars, par devant les Commissaires qui seront nommez". *Ibid.*, f. 305.

¹⁹ This article is printed in Parke, *op. cit.*, III. 235 n.

and military stores at Placentia; (4) the right of the French to fish and dry cod, admitted by the convention of London, should not be restricted to the Little North, but enjoyed wherever formerly exercised, except in Placentia Bay, where the French might be drawn into quarrels with the English—this was especially necessary, since on the British maps transmitted to them by the British plenipotentiaries the Little North was marked as on the west coast of Newfoundland, where the fishing was valueless, instead of on the east coast as on the French maps, where the fishing was excellent; (5) the English appeared to leave Cape Breton to the French as a concession for the future, whereas it belonged and had always belonged to the King of France.

Since the end of the article did not agree with the middle touching the fishing, and for the reasons stated, the French plenipotentiaries presented a new draft incorporating their proposals. While the English had mentioned Cape Breton in their article on Acadia, the French, to emphasize its separateness from the peninsula, referred to it in the article on Newfoundland. With regard to the thirteenth article, the French ministers thought that, while leaving details to the boundary commissioners, it would suffice to stipulate in general that the Indians who were friends or subjects of the two kingdoms might trade reciprocally in each other's lands.

More important than the plenipotentiaries' observations on articles 9-13 of the *projet* were those made by Pontchartrain,²⁰ which, having received Louis XIV.'s approval, were sent by Pontchartrain to Torcy for remittal by him as strict instructions to the plenipotentiaries at Utrecht.

The most notable of these instructions were concerned with article 9.²¹ While the ordnance and its ammunition at Hudson Bay were to be ceded, the hand-guns and their ammunition were to be excepted as being the company's merchandise and not the property of the king. The regulation by commissioners of boundaries between *all* the colonies of the two nations was heartily approved, and the justice of forbidding subjects of the two nations from crossing these boundaries was acknowledged. Inhabitants and property-holders in the colonies to be ceded to Great Britain by the present treaty must be permitted to withdraw to any place with all their movables (as agreed in respect to Hudson Bay), and to sell their lands within three years.

In regard to the eleventh article, the limits of Acadia should be regulated by the boundary commissioners; and the term "*habere se existamarunt*" should be suppressed, since the ownership of Acadia was incontestable and was recognized by England in the treaty of Breda. Article 12 should stipulate that the small islands more than half a league from Newfoundland should remain to those who had always enjoyed them. This was important since on several of the islands the French had good fishing.²² As to the French right

²⁰ Pontchartrain to Torcy, Aug. 17, 1712, Corr. Pol., Hollande, t. 236, fols. 320 ff.; same in P. R. O., St. Pap. For., Treaty Papers, no. 100.

²¹ "Memoire pour M^{rs} les Plenipotentiaires du Roy a Utrecht sur les articles 9, 10, 11, 12 et 13 du projet de traité de Paix donné par l'Angleterre", Aug. 17, 1712. Corr. Pol., Hollande, t. 242, fols. 426 ff.; and same in P. R. O., St. Pap. For., Treaty Papers, no. 100.

²² Pontchartrain to Torcy, Aug. 17, 1712, *loc. cit.*, note 20.

of fishing on the whole Newfoundland coast, the king had reason to believe that there would be no difficulty about it, but was willing that Placentia Bay should be excepted. Besides Cape Breton all the other islands in the Gulf of St. Lawrence belonged incontestably to France. As to article 13, the king disagreed with his plenipotentiaries. If the savages were dependent on either crown on the score of the terrain thereto belonging it would be useless to stipulate anything for them, since they should then be regarded as subjects; and if they were independent, no proposals could be made regarding their concerns. The boundaries to be fixed between New France, New England, and New York would indicate what savage nations depended on them. They should trade only in the countries where they were established and not pass the colonial boundaries. This article Pontchartrain declared to be of infinite importance.²²

The plenipotentiaries were to insist on the insertion in article 9 of a provision that the boundaries of Hudson Bay should be determined from the side of the territory of New France extending toward the north and not toward the mouth of the St. Lawrence. This was to prevent the English from acquiring the tract from Tadoussac to Mingan, where there was considerable trade. The territory of New France, wrote Pontchartrain, extended almost to Hudson Bay and only the cession of that bay was in question. All the banks of the St. Lawrence should belong to the king. The plenipotentiaries should not yield in the matter of ceding the cannon and military stores at Placentia, for these had never been promised to the English, and could most usefully be transferred to the island (Cape Breton) where the French inhabitants of Placentia were to be established.²²

Not till the latter part of December did the British and French ministers, using the August *projet* as a basis, seriously resume the task of adjusting the articles relating to North America. By this time the other important differences touching the treaty of peace between the two crowns had been reconciled.²³ Moreover British diplomacy was on the point of removing a great obstacle to peace by securing from the Dutch a promise of adherence to the general peace, and the signing of a new Anglo-Dutch Barrier treaty, voiding that of 1709.²⁴ The new Barrier treaty was actually concluded on January 19/30, 1713.

The course of the negotiations on North American affairs, from December, 1712, to early March, 1713, was intricate. Upon the return of Strafford to Utrecht toward the middle of December the British and French plenipoten-

²³ Parke, *op. cit.*, III. 179, 180, 186; and *cf. ibid.*, pp. 282, 283, 288-290; *Br. Dipl. Inst.*, vol. II, *France, 1689-1721*, pp. 33, 39-41. Some important points relating to the commercial treaty still remained unadjusted.

²⁴ Weber, *op. cit.*, pp. 334 ff., and see *Br. Dipl. Inst., op. cit.*, pp. 30, 31. For the bearing of the old Barrier treaty on American history see above, Doc. 96, note 22, Doc. 97, pp. 152-153. Under the date of Jan. 30/Feb. 10, 1713, Dean Swift wrote in his *Journal to Stella* that Harrison, secretary to the embassy at Utrecht, "has brought with him the Barrier treaty, as it is now corrected by us and yielded to by the Dutch, which was the greatest difficulty to retard the peace".

tiaries there strove to reach an agreement. Adjustments of the most important questions were made, however, not at Utrecht but at Versailles, whither Prior returned from England, on December 8/19, in the character of plenipotentiary, and where from mid-January to midsummer, 1713, the Duke of Shrewsbury served as ambassador extraordinary. The Duc d'Aumont, who after January 19, 1713, represented France at Whitehall, also played a part in the negotiations.

The chief differences respecting the terms of the treaty of peace remaining unadjusted in December concerned the French fishery on the coasts of Newfoundland and the possession of Cape Breton.²⁵ At Utrecht, Strafford proposed that the French fishery should be limited to the coasts from Cape Ray round by the north to Cape Bonavista; that the British should have sole fishing rights on the south and east coasts between these capes, and that Cape Breton should be divided between the two crowns,²⁶ although the British claimed the right to all of it, as part of Nova Scotia.²⁷ This and some alternative proposals made by the British plenipotentiaries at Utrecht²⁸ were rejected by the French, who desired to retain if possible the fishing of the Chapeau Rouge (the southern shore of the island, west of Placentia Bay)²⁹ and were determined to keep the whole of Cape Breton, as had indeed been specifically provided by article 12 of the British *projet* of the preceding August.³⁰

At Versailles, Prior at once took up with Torcy the question of the Newfoundland fishery. After examining the despatches from Utrecht, he concluded that no agreement would be reached there without orders from the home government.³¹ He found that Torcy and Des Maretz, the controller-general, "still insisted upon their undoubted and never-yielded right to Cape Breton", in which he feared they were too well founded;³¹ and that the latter still had his eye upon Chapeau Rouge, or keeping to the preliminaries³² which gave them the liberty of fishing where they used, which was as well along Chapeau Rouge as the Petit Nord.

While reluctantly admitting the possibility of leaving Cape Breton to the French, Prior declared that if this were done the right of fishing and drying on the Newfoundland coast must be reserved to them in a manner that would not lead to quarrels between them and the British.³³ On this basis, and in

²⁵ Instructions for Shrewsbury, Dec. 11, 1712, in *Br. Dipl. Inst., op. cit.*, pp. 39, 40.

²⁶ Plenipotentiaries to King, Dec. 18, 1712, *Corr. Pol.*, Hollande, t. 240, f. 80.

²⁷ Instructions for Shrewsbury, Dec. 11, 1712, *loc. cit.*

²⁸ Plenipotentiaries to King, Dec. 22, 1712, *Corr. Pol.*, Hollande, t. 240, f. 146.

²⁹ Plenipotentiaries to King, Dec. 18, 1712, *loc. cit.*; same to same, Dec. 22, 1712, *loc. cit.*; same to same, Dec. 31, *ibid.*, f. 219. Mesnager and Des Maretz were impressed by the importance of the fishery of the Chapeau Rouge. To yield it, the latter declared (Dec. 20, 1712), would deprive Brittany and Guienne of the best cod. *Corr. Pol.*, Hollande, t. 243, ff. 247, 272. He stated (Jan. 13, 1713) that it kept busy more than 3000 French sailors. *Corr. Pol.*, Hollande, t. 244, f. 75.

³⁰ See above, p. 198, and *cf.* King to plenipotentiaries, Dec. 23, 1712, *Corr. Pol.*, Hollande, t. 240, f. 76.

³¹ Prior to Bolingbroke, Dec. 17/28, 1712, in Parke, *op. cit.*, III. 234-238.

³² Doc. 96.

³³ King to plenipotentiaries, Addition, Dec. 23, 1712, *Corr. Pol.*, Hollande, t. 243, f. 222.

concert with Prior, the French drew up an important "proposition", identical with an expedient already devised by Bolingbroke and Prior, to be used as a last resort.³⁴ It was as follows:

Que l'Isle du Cap Breton demeurera au Roy avec la liberté d'y faire fortifier.

Que la Province de l'Acadie sera cédée par sa Majesté, avec tous les droits et prerogatives dont les françois ont jouy, a la Reyne de la Grand Bretagne avec l'Isle de Terrebonne, et les Isles adjacentes a cette Isle. Bien entendu que les françois auront et conserveront la faculté de pescher, et de sescher leurs pesches sur les costes de ladite Isle de Terrebonne depuis le Cap de Bonavista en remontant par le Nord jusqu'a la pointe Riche.

Que toutes les Isles situées a l'entrée de la Riviere, et dans le Golphe de St. Laurens appartiendront au Roy.³⁵

This compromise, if agreed on, would give to Great Britain, Acadia and Newfoundland with its adjacent islands; and to France, Cape Breton, with liberty to fortify it, fishery rights on the coasts of the Petit Nord, and all the islands in the river-mouth and gulf of the St. Lawrence. Henceforth this was the French "ultimatum",³⁶ so that Shrewsbury's subsequent attempts to persuade them to quit the Newfoundland fishery naturally failed entirely.³⁷

Bolingbroke would agree to the Prior-Torcy "proposition" only on one condition, that the French should accept an article drafted by him in lieu of articles 9 and 10 of the *projet* of the Anglo-French commercial treaty.³⁸ Upon the acceptance of Bolingbroke's article by Louis XIV. Shrewsbury agreed to the "proposition", and in addition, he obtained Sable Island for Great Britain as part of the Acadian boundary.³⁹

The Prior-Torcy proposition adjusted in a general way not only the controversies regarding the Newfoundland fishery and Cape Breton, but two others: the limits of the Acadian fishery, and the ownership of the islands in the river-mouth and gulf of the St. Lawrence. The former was one of the most strongly contested points of dispute, and one of the last to be settled. The French plenipotentiaries at Utrecht had promised that their countrymen should not fish on the coasts of Acadia.⁴⁰ The British plenipotentiaries desired to define the limits of the fishery. They proposed that the French should abstain from fishing within thirty leagues to the southeast and ten leagues to the northwest of Acadia. The French thought it needless to fix any limits on the southeast side, and unreasonable to fix them on the northwest in a

³⁴ Parke, *op. cit.*, III. 283, 299.

³⁵ The text is from Corr. Pol., Hollande, t. 243, f. 227. It is printed in Parke, *op. cit.*, III. 238 n.

³⁶ Torcy to Bolingbroke, Jan. 18, 1713. Parke, *op. cit.*, III. 325.

³⁷ Shrewsbury to Oxford, Jan. 8/19, 1713, in Hist. MSS. Comm., *Marquis of Bath MSS.*, I. 228, 229; Shrewsbury to Bolingbroke, Jan. 12/23, 1713, Parke, *op. cit.*, III. 232, 233.

³⁸ Bolingbroke to Shrewsbury, Jan. 19/30, 1713, in Parke, *op. cit.*, III. 313, 314. A part of the commercial treaty is printed below as Doc. 101.

³⁹ Shrewsbury to Bolingbroke, Jan. 27/Feb. 7, 1713, in Parke, *op. cit.*, III. 369-371.

⁴⁰ Plenipotentiaries to King, Dec. 31, 1712, "Changements que les plenipotentiaires d'Angleterre pretendent faire au projet du traité de paix concerté au mois d'aoust dernier", in Corr. Pol., Hollande, t. 240, f. 223.

way that would prevent them from fishing on the coast of Cape Breton and in the Gulf of St. Lawrence, and that this must cause friction between the fishermen of the two nations.⁴¹ The Prior-Torcy proposition provided that Acadia should be ceded "avec tous les droits et prérogatives dont les François ont joui". Prior declared that the British demand that the French should not fish within thirty leagues of the southeast of Acadia, that is, "upon the long bank which runs from west to east before that country", was founded upon the assertion that while Acadia was in French hands, the British were obliged by the like restriction. Consequently, he argued that the words of the proposition admitted the British claim and finished the dispute, as Torcy himself observed.⁴¹ The British plenipotentiaries gave up the northwest limit,⁴² but in the final *projet* of the peace treaty completed about the middle of February, 1713, they inserted a provision excluding the French from fishing within thirty leagues of the Nova Scotian coasts, beginning from Sable Island, and stretching towards the southwest.⁴³ This was one of two provisions of the *projet* not agreed to by the French plenipotentiaries, but since the queen included it in her ultimatum⁴⁴ Louis XIV., for the sake of peace, yielded it, early in March.⁴⁵

Besides the twelfth article of the February *projet*, one other, the fourteenth, failed of acceptance by the French plenipotentiaries. Article 14 stipulated that in the places ceded or restored by France, by virtue of the treaty, French subjects should have liberty to withdraw elsewhere within a year with their movables. The right to sell their immovable goods was not granted them, and the French plenipotentiaries objected to this omission. The French had previously demanded that at the restoring of the territory of Hudson Bay their countrymen in that region might have liberty and a time allowed to sell their immovables.⁴⁶ The British had attempted to make a distinction between the "restored" countries—Hudson Bay and Newfoundland—and the "ceded" countries—Acadia and St. Christopher. While admitting the right of the French to sell their immovables in ceded countries, they denied it with respect to such as should be restored, on the ground that the French had usurped their immovable property in those districts from the English.⁴⁷ In the February *projet* however the distinction between ceded and restored countries was no longer drawn—although the expression was used in article 14—and the sale of immovables was not provided for.

⁴¹ Prior to Bolingbroke, Dec. 28, 1712/Jan. 8, 1713, in Parke, *op. cit.*, III. 268; *cf.* also King to plenipotentiaries, Jan. 2, 1713, Corr. Pol., Hollande, t. 247, f. 36.

⁴² Plenipotentiaries to King, Jan. 9, 1713, Corr. Pol., Hollande, t. 247, f. 65.

⁴³ Plenipotentiaries to King, Feb. 16, 1713, Corr. Pol., Hollande, t. 248, f. 216. The *projets* of the treaties of peace and commerce accompanied this letter.

⁴⁴ "Memorial of the Queen's last resolutions upon the differences in the treaty of peace and commerce between her Majesty and the most Christian King", in Parke, *op. cit.*, III. 424 ff.

⁴⁵ King to plenipotentiaries, Mar. 7, 1713, Corr. Pol., Hollande, t. 249, f. 17.

⁴⁶ French plenipotentiaries to King, Dec. 31, 1712, Corr. Pol., Hollande, t. 240, f. 223; French plenipotentiaries to King, Jan. 9, 1713, Corr. Pol., Hollande, t. 247, f. 64; "Points in dispute upon the project of a treaty of peace", in Parke, *op. cit.*, III. 258 n.

⁴⁷ "Points in dispute", *loc. cit.*

Louis XIV. chafed at the injustice "of depriving private individuals of the natural liberty of selling their immovables in American countries", which he himself had left to the English by the treaty of Breda.⁴⁸ Yet he was unwilling to delay the peace on this account, and authorized his plenipotentiaries at Utrecht to accept the article,⁴⁹ at the same time reserving to himself the right of referring the matter to the queen's decision.⁵⁰ Although not admitting to article 14 any provision concerning the *bona immobilia*, yet before the instrument was signed Queen Anne promised that the French should receive entire satisfaction in this matter, on condition that Louis XIV. should release the Protestants who were in the galleys because of their religion.⁵¹ The French court having agreed to this proposal, orders were sent to Governor Nicholson to suffer the French inhabitants of Nova Scotia and Newfoundland to enjoy their lands, or to sell them if they chose to remove elsewhere.⁵² The queen also consented to the addition to article 14 of a sentence permitting inhabitants of ceded places who chose to remain therein under British rule to practise the Roman Catholic religion so far as was consistent with the laws of Great Britain.⁵³

Another point in the queen's ultimatum⁵⁴ besides that of the *bona immobilia* was highly displeasing to Louis XIV. This was a demand made not for Great Britain but in behalf of her ally Portugal. Great Britain had drawn Portugal into the Grand Alliance in 1703, by promising her⁵⁵ an extension of her frontier on the east, at Spain's expense; a favorable settlement of her territorial disputes with France and Spain in America; and the fulfillment by Spain of the conditions of the *Transación* of 1701, concerning the assiento.⁵⁶ Subsequently Portugal, secure in England's proximity, had agreed to give up her European barrier in lieu of promises of security from France and Spain.⁵⁷ But since France might overrun Portugal's American colonies before Great Britain knew they were attacked,⁵⁸ the British government now insisted: (1) that France (as well as Spain) should engage not to molest the dominions of Portugal "either in Europe, the West Indies, or in any other part of the world"; (2) that for the purpose of removing hardships imposed upon Portugal by France in the provisional treaty of 1700⁵⁹ France should

⁴⁸ See Doc. 58, art. 11, p. 140, in vol. II. of this series.

⁴⁹ King to plenipotentiaries, Mar. 7, 1713, Corr. Pol., Hollande, t. 249, f. 17.

⁵⁰ Parke, *op. cit.*, III. 469 ff. On this matter of the *bona immobilia* see also *ibid.*, pp. 474, 478, 500, 514, *passim*, IV. 55, 68, 111, 113, 117, 118; Shrewsbury to Oxford, Feb. 26/Mar. 8, 1713, in Hist. MSS. Comm., *Marquis of Bath MSS.*, I. 230.

⁵¹ Parke, *op. cit.*, III. 500, 501, 514, IV. 68, 113, 117, 118.

⁵² *Cal. St. Pap. Col.*, 1712-1714 (1926), nos. 343, 370.

⁵³ King to plenipotentiaries, Feb. 24, 1713, Corr. Pol., Hollande, t. 248, f. 305; Parke, *op. cit.*, III. 424 n.

⁵⁴ Parke, *ibid.*, and p. 441 n.

⁵⁵ Doc. 92, Introduction pp. 96 ff.

⁵⁶ Doc. 88.

⁵⁷ Parke, *op. cit.*, III. 425 n., 433.

⁵⁸ *Ibid.*, pp. 433, 434.

⁵⁹ This provisional treaty is referred to above, Doc. 87, Introduction, p. 29. The French-Portuguese treaty signed at Utrecht on Mar. 31/Apr. 11, 1713, stipulated (art. 9) that the provisional treaty should be void.

desist from all pretensions to the navigation of the Amazon River, both of whose shores should belong to the Portuguese; and (3) that the boundaries between the French and the Portuguese colonies in America should be clearly settled.⁶⁰ Bolingbroke argued that the French should accept these proposals in order to cure the world of its jealousy of their plans for expansion in America, already aroused by their encroachments in Santo Domingo and their apparent design to establish and strengthen themselves in Louisiana.⁶¹

In the queen's demand concerning the navigation of the Amazon Louis XIV. found the same lack of justice as in her refusal of the *bona immobilia*, yet so strong was his desire for an immediate peace that he consented to submit the former as well as the latter question to the queen's judgment⁶² and allow his plenipotentiaries to conclude the treaties.

The obstacles to peace having been thus removed, treaties of peace and commerce were signed by the British and French plenipotentiaries at Utrecht on March 31/April 11, 1713. Treaties of peace between France and Portugal,⁶³ France and Prussia, and France and Savoy,⁶⁴ and treaties of peace and commerce between France and the States General were also concluded at the same place on the same day. Not until the following year did the Emperor and Empire come to terms with Louis XIV.

The articles of the British-French peace treaty bearing on North American history are printed below. The most significant of these and of other provisions of this treaty are, briefly, as follows:

Peace was to be perpetual between Great Britain and France, both within and without Europe (art. 1); Louis XIV. acknowledged the Protestant

⁶⁰ Parke, *op. cit.*, III. 425 n., 466 n.

⁶¹ *Ibid.*, p. 445.

⁶² *Ibid.*, p. 469 n.

⁶³ By the eighth article of the French-Portuguese treaty the King of France agreed to yield to Portugal forever the lands of the Cap du Nord, between the Amazon and the Oyapok or Vincent Pinzon rivers. By the tenth article the King of France recognized that both banks of the Amazon River belonged to Portugal; and promised for himself and his successors never to advance any claims to the navigation or use of the river.

The ninth article provided that the King of Portugal might rebuild any forts demolished in execution of the provisional treaty of 1700, and might erect in the lands mentioned in article 8 as many new forts as he should think fit.

The eleventh article was as follows: "11. De la même manière que Sa Majesté Très Catholique se départ en son nom, et en celui de ses hoirs, successeurs et héritiers de toute prétention sur la navigation et l'usage de la Rivière des Amasones, elle se désiste de tout droit, qu'elle pourroit avoir sur quelque autre domaine de Sa Majesté Portugaise tant en Amérique, que dans toute autre partie du monde."

By the twelfth article the King of France promised not to allow the inhabitants of Cayenne (French Guiana) and other French subjects to go to trade in the Marañon and the mouth of the Amazon River, or to cross the Vincent Pinzon River to trade or to buy slaves in the lands of the Cap du Nord. The King of Portugal promised that none of his subjects should go to trade in Cayenne.

By the thirteenth article the King of France promised to prevent French missionaries, or others under his protection, from being in the aforesaid countries.

By the sixteenth article the Kings of France and Portugal accepted the guaranty of the Queen of Great Britain for the entire execution of this treaty, for its validity and its continuance. The treaty is printed in H. Vast, *Les Grands Traités du Règne de Louis XIV.*, III. 112-119.

⁶⁴ By the sixth article of this treaty the King of France agreed that on failure of descendants of the King of Spain the succession of the crown of Spain and the West Indies should fall to the duke of Savoy and his legitimate male descendants. The treaty is printed *ibid.*, pp. 129-140.

Hanoverian succession to the British crown (art. 4); and promised not to disturb any British sovereign of this line, or aid other persons to oppose this succession (art. 5); Great Britain and France would maintain the separation of the French and Spanish crowns, and France would not seek or accept any other usages regarding trade and navigation to Spain and Spanish America than were practised in those countries in the reign of Charles II., or than should be accorded to other nations (art. 6); navigation and commerce should be restored between Great Britain and France, according to the new treaty of commerce (art. 7); Louis XIV. was to have the fortifications of Dunkirk razed and the harbor filled up, after he had received an equivalent (art. 9); he was to restore to Great Britain Hudson Bay and Strait, with their territory; the limits between Hudson Bay and places belonging to the French were to be determined by commissioners within a year, and were not to be crossed by subjects of either; the same commissioners were to settle the boundaries between the other British and French colonies in those parts (art. 10); the Hudson's Bay Company was to be satisfied for losses suffered from the French in time of peace; the commissioners who were to estimate these losses would also investigate other British and French claims, relating to ships taken in time of peace, and Montserrat, Nevis, and Gambia (art. 11); France was to yield St. Christopher and Nova Scotia to Great Britain, and French subjects were not to fish on the Nova Scotian coasts within thirty leagues beginning from Sable Island and stretching toward the southwest (art. 12); Newfoundland with the adjacent islands was to belong wholly to Great Britain, but French subjects might fish and dry fish from Cape Bonavista round by the north to Point Riche; Cape Breton and all other islands in the river-mouth and Gulf of St. Lawrence should belong to the French, with the right to fortify (art. 13); French subjects might withdraw from the yielded places within a year, taking their movables, and those who remained under British sovereignty might exercise the Roman Catholic religion so far as allowed by British laws (art. 14); subjects of either crown in America were not to molest Indians subject or friendly to the other and on both sides they might go and come freely on account of trade (art. 15); letters of reprisal and marque were annulled (art. 16); the conditions of the suspension of arms were to remain in force in relation to all prizes (art. 17); satisfaction was to be given to the allies of Great Britain in respect to their legitimate demands on France (art. 20); France agreed that in the treaty to be made with the Empire provisions concerning religion should conform to the treaties of Westphalia (art. 21); the new French-Portuguese and French-Savoy treaties were to form part of the present treaty and were guaranteed by Great Britain (arts. 24, 25); Sweden, Tuscany, Genoa, and Parma were included in the treaty (art. 26); as were also the Hanseatic towns (art. 27); ratifications were to be exchanged within four weeks (art. 29).

The peace was welcomed in the colonies.⁶⁵

⁶⁵ *Cal. St. Pap. Col.*, 1712-1714, nos. 373 (i), 453 (i), 464-466, 468 (i), 496, 502, 509, 519 (i), 678 (i, ii).

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TEXT.⁶⁶

Louis, par la grace de Dieu, roy de France et de Navarre a tous ceux qui ces presentes lettres verront, Salut. Comme notre tres cher et bien amé cousin le Marquis d'Huxelles, marechal de France, chevalier de nos Ordres, et notre lieutenant general au gouvernement de Bourgogne, et notre cher et bien amé le Sieur Mesnager, chevalier de notre Ordre de St. Michel, nos ambassadeurs extraordinaires, et plenipotentiaires, en vertu des pleins-pouvoirs que nous leur en avons donné, auroient conclu, arrêté et signé a Utrecht le onzieme du present mois d'Avril avec le Sieur Jean Evesque de Bristol garde du sceau privé d'Angleterre, conseiller de notre tres chere et tres amée soeur, la Reyne de la Grande Bretagne en son Conseil d'Estat, doyen de Windsor et secretaire de l'Ordre de la Jarretierre, et le Sieur Thomas comte de Strafford, vicomte de Wentworth de Wentworth Woodhouse, et de Stainborough, baron d'Iversly, Neumarch, et Raby, conseiller de notredite soeur en son Conseil d'Estat, son ambassadeur extraordinaire et plenipotentiaire aupres des Estats Generaux des Provinces Unies des Paysbas, colonel de son regiment royal de dragons, lieutenant general de ses armées, premier seigneur de l'Amirauté de la Grande Bretagne et d'Irlande, chevalier

⁶⁶ The text is taken from the original manuscript of the ratification by Louis XIV. preserved in the P. R. O., St. Pap. For., Treaties, no. 73.

de l'Ordre de la Jarretiere en qualité d'ambassadeurs extraordinaires et plenipotentiaires de notredite soeur pareillement munis de ses pleinspouvoirs, le traité de paix dont la teneur s'ensuit :

D'autant qu'il a plû a Dieu tout puissant et misericordieux pour la gloire de son saint nom, et pour le salut du genre humain d'inspirer en son tems aux princes le desir reciproque d'une reconciliation qui fist cesser les malheurs qui desolent la terre depuis si longtems, qu'il soit notoire a tous et a un chacun a qui il apartiendra que par la direction de la Providence Divine, le Serenissime et tres Puissant Prince Louis XIV. par la grace de Dieu Roy tres Chrestien de France et de Navarre, et la Serenissime et très Puissante Princesse Anne par la grace de Dieu, Reyne de la Grande Bretagne, mûs du desir de procurer (autant qu'il est possible a la prudence humaine de le faire) une tranquillité perpetuelle a la Chrestienté, et portez par la consideration de l'interest de leurs sujets, sont enfin demeurez d'accord de terminer cette guerre, si cruelle par le grand nombre de combats, si funeste par la quantité du sang Chrestien qu'on y a versé, laquelle apres s'estre malheureusement allumée il y a plus de dix ans, a toujours continué depuis avec opiniatreté. Leurs susdites Majestez, afin de poursuivre un projet si digne d'elles, ont nommé et constitué de leur propre mouvement, et par le soin paternel qu'elles ont pour leurs sujets et pour la Chrestienté leurs ambassadeurs extraordinaires et plenipotentiaires respectifs, sçavoir Sa Majesté Tres Chrestienne le Sieur Nicolas Marquis d'Huxelles, marechal de France, chevalier des Ordres du Roy, lieutenant general au gouvernement de Bourgogne etc. et le Sieur Nicolas Mesnager, chevalier de l'Ordre de St. Michel ; Et Sa Majesté Britannique le bien Reverend Jean Evesque de Bristol, garde du sceau privé d'Angleterre, conseiller de la Reyne en son Conseil d'Estat, doyen de Windsor, et secretaire de l'Ordre de la Jarretiere, et le Sieur Thomas comte de Strafford, viconte de Wentworth Woodhouse, et de Stainborough, baron de Neumarch, Oversley, et Raby, conseiller de la Reyne en son Conseil d'Estat, son ambassadeur extraordinaire et plenipotentiaire aupres des Estats Generaux des Provinces Unies, colonel du regiment royal de dragons de Sa Majesté, lieutenant general de ses armées, premier seigneur de l'Amirauté de la Grande Bretagne et d'Irlande, et chevalier de l'Ordre de la Jarretiere, auxquels Leurs Majestez Royales ont donné leurs pleinspouvoirs pour traiter, convenir, et conclure une paix ferme et stable. Les susdits ambassadeurs extraordinaires et plenipotentiaires apres plusieurs conferences épineuses tenûes dans le congrez etably pour cette fin à Utrecht ayant enfin surmonté sans l'intervention d'aucune mediation tous les obstacles qui s'opposoient a l'accomplissement d'un dessein si salutaire, et apres avoir demandé a Dieu qu'il daignast conserver a jamais leur ouvrage en son entier, et qu'il en fist ressentir le fruit a la posterité la plus reculée, et s'estre communiqué respectivement leurs pleinspouvoirs dont les copies seront inserées de mot a mot a la fin du present traité, et en avoir duement fait l'echange, sont enfin convenus des articles d'une paix et amitié mutuelle entre leursdites Majestez Royales, leurs peuples et sujets de la manière qui suit.

1.⁶⁷ Il y aura une paix universelle et perpetuelle, une vraie et sincere amitié entre le Serenissime et tres Puissant Prince Louis XIV. Roy tres Chrestien et la Serenissime et tres Puissante Princesse Anne, Reyne de la Grande Bretagne, leurs heritiers et successeurs, leurs royaumes, estats et

⁶⁷ The first two articles are copied from the first two articles of the treaty of Ryswyk (Doc. 84, vol. II.), except for the clause interpolated in the first article of the later treaty, " tant au dedans qu'au dehors de l'Europe ".

sujets, tant au dedans qu'au dehors de l'Europe. Cette paix sera inviolablement observée entre eux si religieusement et sincèrement qu'ils feront mutuellement tout ce qui pourra contribuer au bien, à l'honneur, et à l'avantage l'un de l'autre, vivant en tout comme bons voisins, et avec une telle confiance et si reciproque, que cette amitié soit de jour en jour fidelement cultivée, affermie, et augmentée.

2. Toutes inimitiez, hostilitiez, guerres, et discordes entre ledit Roy tres Chrestien et ladite Reyne de la Grande Bretagne, et pareillement entre leurs sujets, cesseront et demeureront eteintes et abolies, en sorte qu'ils eviteront soigneusement a l'avenir de se faire de part ny d'autre aucun tort, injure, ou préjudice, et qu'ils s'abstiendront de s'attaquer, piller, troubler, ou inquieter sur quelque maniere que ce soit, par terre, par mer, ou autres eaux dans tous les endroits du monde, et particulièrement dans toute l'étendue des royaumes, terres et seigneuries dudit Roy et de ladite Reyne sans aucune exception.

6. D'autant que la guerre, que la presente paix doit esteindre, a esté allumée principalement parceque la seureté et la liberté de l'Europe ne pouvoient pas absolument souffrir que les couronnes de France et d'Espagne fussent reunies sur une mesme teste, et que sur les instances de Sa Majesté Britannique, et du consentement tant de Sa Majesté Tres Chrestienne que de Sa Majesté Catholique on est enfin parvenu, par un effet de la Providence Divine, a prevenir ce mal pour tous les tems a venir, moyennant des renonciations conceües dans la meilleure forme et faites en la maniere la plus solennelle, dont la teneur suit cy apres.⁶⁸

Estant suffisamment pourveu par la renonciation cy relative, laquelle doit estre eternellement une loy inviolable et toujours observée, a ce que le Roy Catholique, ny aucun Prince de sa posterité, puisse jamais aspirer ny parvenir a la Couronne de France, et d'un autre costé les renonciations reciproques a la couronne d'Espagne faites par la France, ainsy que les autres actes qui etablissent la succession hereditaire a la couronne de France, lesquelles tendent a la mesme fin; ayant aussy suffisamment pourveu a ce que les couronnes de France et d'Espagne demeurent separées et desunies, de maniere que les susdites renonciations, et les autres transactions qui les regardent, subsistant dans leur vigueur, et estant observées de bonne foi, ces couronnes ne pourront jamais estre reunies; Ainsy le Serenissime Roy Tres Chrestien, et la Serenissime Reyne de la Grande Bretagne s'engagent solennellement, et par parole de Roy, l'un a l'autre, qu'eux ny leurs heritiers et successeurs ne feront jamais rien, ny ne permettront que jamais il soit rien fait capable d'empêcher les renonciations et autres transactions susdites d'avoir leur plein et entier effet; au contraire leurs Majestez Royales prendront un soin sincere, et feront leurs efforts affin que rien ne donne atteinte a ce fondement du salut public, ny ne puisse l'ebranler; En outre Sa Majesté Tres Chrestienne demeure d'accord et s'engage que son intention n'est pas de tacher d'obtenir ny mesme d'accepter a l'avenir que pour l'utilité de ses sujets il soit rien changé, ny innové dans l'Espagne ny dans l'Amerique Espagnole, tant en matiere de com-

⁶⁸ Here follow: (1) the renunciation of King Philip made at Madrid Nov. 5, 1712, and reiterated and confirmed at Buenretiro two days later; (2) the certificate of the notary public and of the consent, approval, and confirmation of the States of Castile in respect to this renunciation, Madrid, Nov. 9, 1719; (3) the renunciation of the Duke of Berry to the crown of Spain, Marly, Nov. 24, 1712; (4) the renunciation of the Duke of Orleans, Paris, Nov. 19, 1712; (5) the letters patent of the King of France, December, 1700, to preserve to the Duke of Anjou, his grandson, the right of succession to the crown of France; (6) letters patent of the King of France, March, 1713, annulling the former, and accepting and authorizing the renunciations.

merce, qu'en matiere de navigation, aux usages pratiquez en ces pays sous le regne du feu Roy d'Espagne Charles Second, non plus que de procurer a ses sujets dans les susdits pays aucun avantage qui ne soit pas accordé de mesme dans toute son etendue aux autres peuples et nations lesquelles y negotient.

10. Le Roy Tres Chrestien restituera au royaume et a la Reyne de la Grande Bretagne pour les posseder en plein droit et a perpetuité, la Baye, et le Détroit d'Hudson avec toutes les terres, mers, rivages, fleuves, et lieux qui en dependent et qui y sont situez, sans rien excepter de l'étendue desdites terres et mers possedez presentement par les François; le tout aussy bien que tous les edifices et forts construits, tant avant que depuis que les François s'en sont rendus maitres, seront delivrez de bonnefoy en leur entier, et en l'estat ou ils sont a present sans en rien demolir, avec toute l'artillerie, boulets, la quantité de poudre proportionnée a celle des boulets (si elle s'y trouve) et autres choses servant a l'artillerie, a ceux des sujets de la Reyne de la Grande Bretagne munys de ses commissions pour les demander et recevoir dans l'espace de six mois, a compter du jour de la ratification du present traité ou plutost si faire si peut, a condition touttefois qu'il sera permis a la Compagnie de Quebeck et tous autres sujets quelconques du Roy tres Chrestien de se retirer desdites terres et detroit, ou ils voudront par terre, ou par mer, avec tous leurs biens, marchandises, armes, meubles et effets de quelque nature ou espèce qu'ils soient, a la reserve de ce qui a esté excepté cy dessus. Quant aux limites entre la Baye d'Hudson et les lieux appartenant a la France, on est convenu reciproquement qu'il sera nommé incessamment des Commissaires de part et d'autre, qui les determineront dans le terme d'un an; et il ne sera pas permis aux sujets des deux nations de passer lesdites limites pour aller les uns aux autres ny par mer ny par terre.⁶⁹ Les mesmes Commissaires auront le pouvoir de regler pareillement les limites entre les autres colonies Francoises et Britanniques dans ces pays la.

11. Le Roy Tres Chrestien fera donner une juste et equitable satisfaction aux interessez de la Compagnie Angloise de la Baye d'Hudson, des pertes et dommages ⁷⁰ qu'ils peuvent avoir soufferts pendant la paix, de la part de la nation françoise, par des courses ou depredations, tant en leurs personnes que dans leurs colonies, vaisseaux ou autres biens, dont l'estimation sera faite par des Commissaires qui seront nommez a la requisition de l'une ou de l'autre des parties. Les mesmes Commissaires prendront connoissance des plaintes qui pourront estre faites tant de la part des sujets de la Grande Bretagne, touchant

⁶⁹ British and French commissioners had been appointed in 1687 to adjust conflicting claims to the Hudson Bay region, and to settle the boundaries between the colonies of the two crowns in North America. See Doc. 80, in vol. II. of this series. The treaty of Ryswyk (Doc. 84, vol. II.), provided by its eighth article for the appointment of commissioners for the same objects. Some notices of their fruitless activities appear in the *Calendar of State Papers, Colonial*, for the years 1700 and 1701. Between November, 1712, and January, 1713, the British and French made some ineffectual attempts to settle the limits of Hudson Bay through negotiation. Prior professed to believe that trade with the Indians of that region, rather than territorial sovereignty, was the important question. Parke, *op. cit.*, III. 262 n., 265; King to plenipotentiaries, Nov. 21, 1712, Corr. Pol., Hollande, t. 239, f. 100; plenipotentiaries to King, Dec. 18, 1712, *id.*, t. 240, f. 81; "Limites de la Baye d'Hudson", *ibid.*, ff. 99, 100; plenipotentiaries to King, *id.*, t. 239, f. 142; same to same, Dec. 19, 1712, *id.*, t. 240, f. 98; King to plenipotentiaries, Dec. 23, 1712, *ibid.*, ff. 77, 223, 224; plenipotentiaries to King, *ibid.*, f. 220; King to plenipotentiaries, Jan. 2, 1713, *id.*, t. 247, ff. 36, 37.

⁷⁰ On the incursions of the French into the bay in time of peace see vol. II. of this series, pp. 324-325 (Doc. 80), and p. 351 (Doc. 84).

les vaisseaux pris par les François durant la paix, et les dommages qu'ils pourront avoir soufferts l'année dernière dans l'Isle de Monserrat,⁷¹ ou autres, que de la part des sujets de la France touchant les capitulations faites dans l'Isle de Nieves,⁷² et au Fort de Gambie, et des vaisseaux françois qui pourroient avoir esté pris par les sujets de la Grande Bretagne en tems de paix, et toutes autres contestations de cette nature, meues entre les deux nations, et qui n'ont point encore esté réglées; [et] il en sera fait de part et d'autre bonne et prompte justice.

12. Le Roi Tres Chrestien fera remettre a la Reyne de la Grande Bretagne le jour de l'eschange des ratifications du present traité de paix des lettres et actes autentiques qui feront foy de la cession faite a perpetuité a la Reyne et a la Couronne de la Grande Bretagne, de l'Isle de St. Christophle que les sujets de Sa Majesté Britannique désormais posséderont seuls; de la Nouvelle Ecosse, autrement dite Acadie, en son entier, conformément a ses anciennes limites; comme aussy de la ville de Port Royal, maintenant appelée Annapolis Royale, et generalement de tout ce qui depend desdites terres, et isles de ce paysla, avec la souveraineté, propriété, possession, et tous droits acquis par traitez ou autrement, que le Roy Tres Chrestien, la Couronne de France ou leurs sujets quelconques ont eus jusqu'a present sur lesdites isles, terres, lieux, et leurs habitans, ainsy que le Roy Tres Chrestien cede et transporte le tout a ladite Reyne, et a la Couronne de la Grande Bretagne, et cela d'une maniere et d'une forme si ample qu'il ne sera pas permis a l'avenir aux sujets du Roy Tres Chrestien d'exercer la pesche dans lesdites mers, bayes, et autres endroits a trente lieües pres des costes de la Nouvelle Ecosse, au sud est, en commençant depuis l'isle apellée vulgairement de Sable inclusivement et en tirant au sud ouest.

13. L'Isle de Terre-neuve, avec les isles adjacentes⁷³ apartiendra desormais et absolument a la Grande Bretagne, et a cette fin le Roy Tres Chrestien fera remettre a ceux qui se trouveront a ce commis en ce paysla dans l'espace de sept mois a compter du jour de l'eschange des ratifications de ce traité, ou plutost si faire se peut, la ville et le fort de Plaisance, et autres lieux que les François pourroient encore posseder dans ladite isle, sans que ledit Roy Tres Chrestien, ses heritiers et successeurs, ou quelques uns de ses sujets, puissent desormais pretendre quoyque ce soit, et en quelque tems que ce soit sur ladite isle, et les isles adjacents en tout ou en partie. Il ne leur sera pas permis non plus d'y fortifier aucun lieu, ny d'y establir aucune habitation en façon quelconque, si ce n'est des echafauts et cabanes necessaires et usitées pour secher le poisson, ny aborder dans ladite isle dans d'autre tems que celui qui est propre pour pescher, et necessaire pour secher le poisson. Dans laquelle isle il ne sera pas permis auxdits sujets de la France de pescher et de secher le poisson en aucune autre partie, que depuis le lieu appelé Cap de Bona Vista, jusqu'a l'extremité septentrionale de ladite isle et de la en suivant la partie occidentale, jusqu'au lieu appelé Pointe Riche. Mais l'isle dite Cap Breton, et toutes les

⁷¹ For Cassart's attack on Montserrat see *Cal. St. Pap. Col.*, 1712-1714 (1926), p. xxvi, and nos. 6, 8, 17, etc.

⁷² On capitulation of Nevis to d'Iberville, in 1706, see *Cal. St. Pap. Col.*, 1706-1708 (1916), no. 357, et *passim*.

⁷³ The French ministers strove to have "adjacent islands" defined as those within half a league of Newfoundland, in order that France might retain the island of St. Pierre. The English however refused this definition and claimed this small but important island. On Jan. 2, 1713, Louis XIV. instructed his plenipotentiaries not to contest the point any longer. St. Pierre therefore passed to the British. King to plenipotentiaries, Jan. 2, 1713, in *Corr. Pol.*, Hollande, t. 247, f. 36; Prior to Bolingbroke, Jan. 8, 1713, in Parke, *op. cit.*, III. 269, 270; plenipotentiaries to King, Jan. 9, 1713, *Corr. Pol.*, Hollande, t. 247, f. 65.

autres quelconques situées dans l'embouchure et dans le Golphe de St. Laurent, demeureront a l'avenir a la France, avec l'entiere faculté au Roy tres Chrestien d'y fortifier une ou plusieurs places.

14. Il à esté expressément convenu que dans tous les lieux et colonies qui doivent estre cedées ou restituées en vertu de ce traité par le Roy tres Chrestien, les sujets dudit roy auront la liberté de se retirer ailleurs dans l'espace d'un an avec tous leurs effets mobilières qu'ils pourront transporter ou il leur plaira. Ceux neantmoins qui voudront y demeurer et rester sous la domination de la Grande Bretagne, doivent jôir de l'exercice de la religion Catolique et Romaine, entant que le permettent les loix de la Grande Bretagne.

15. Les habitans du Canada et autres sujets de la France ne molesteront point a l'avenir les Cinq Nations ou cantons des Indiens soumis a la Grande Bretagne,⁷⁴ ny les autres nations de l'Amerique amies de cette couronne. Pareillement les sujets de la Grande Bretagne se comporteront pacifiquement envers les Americains sujets ou amis de la France, et les uns et les autres jôiront d'une pleine liberté de se frequenter pour le bien du commerce, et avec la mesme liberté les habitans de ces regions pourront visiter les colonies Françoises et Britanniques pour l'avantage reciproque du commerce sans aucune molestation, ny empechement de part ny d'autre. Au surplus les Commissaires regleront exactement et distinctement quels seront ceux qui seront ou devront estre censez sujets et amis de la France, ou de la Grande Bretagne.

17. D'autant que dans les articles de la suspension d'armes conclüe le vingt deuxieme Aoust, et prorogée ensuite pour quatre mois entre les parties contractantes, il est expressément stipulé en quels cas les vaisseaux, marchandises, et autres effets pris de part et d'autre doivent demeurer a celui qui s'en est rendu maitre, ou estre restituez a leur premier propriétaire, il a esté convenu que dans lesdits cas les conditions de la suspension d'armes demeureront en toute vigueur, et que tout ce qui concernera ces sortes de prises faites, soit dans les mers Britanniques et Septentrionales, ou partout ailleurs, sera executé de bonne foy selon leur teneur.

24. Le traité de paix signé aujourd'huy entre Sa Majesté tres Chrestienne, et Sa Majesté Portugaise fera partie du present traité, comme s'il estoit inseré icy mot a mot, Sa Majeste la Reyne de la Grande Bretagne declarant qu'elle a offert sa garantie, laquelle elle donne dans les formes les plus solennelles pour la plus exacte observation et execution de tout le contenu dans ledit traité.

25. Le traité de paix de ce jourd'huy entre Sa Majeste Tres Chrestienne, et son Altesse Royale de Savoye est specialement compris et confirmé par le present comme partie essentielle d'iceluy et comme si ledit traité estoit icy inseré mot a mot, Sa Majesté la Reyne de la Grande Bretagne s'engageant expressément aux mesmes promesses de maintenance et de garantie stipulées par ledit traité, outre celles par elle cydevant promises.

29. Enfin les ratifications solennelles du present traité expedées en bonne et deüe forme, seront rapportées et echangées de part et d'autre a Utrecht dans l'espace de quatre semaines ou plutost s'il est possible a compter du jour de la signature.

⁷⁴ This acknowledgement of British sovereignty over the Five Nations ended a long-standing dispute. Cf. in vol. II. of this series, Doc. 79, p. 309.

30. En foy de quoy, nous soussignez ambassadeurs extraordinaires et plenipotentiaires du Roy Tres Chrestien, et de la Reyne de la Grande Bretagne avons signé les presens articles de notre main et y avons fait apposer les cachets de nos armes.

Fait a Utrecht le onzieme Avril, de l'an mil sept cens treize.

HUXELLES.
MESNAGER.

JOH. BRISTOL, C. P. S.
STRAFFORD.

Nous ayant agreable le susdit traité de paix en tous et chacun les points et articles qui y sont contenus et declarez, avons iceux tant pour nous que pour nos heritiers, successeurs, royaumes, pays, terres, seigneuries, et sujets, accepté, approuvé, ratifié, et confirmé. Et par ces presentes signées de notre main acceptons, approuvons, ratifions et confirmons, et le tout promettons en foy et parole de Roy, sans l'obligation et hypoteque de tous et un chacun nos biens presens et avenir, garder, observer inviolablement sans jamais aller ny venir au contraire directement ou indirectement en quelque sorte et maniere que ce soit. En temoin de quoy nous avons fait mettre notre scel a ces presentes. Donné a Versailles le dixhuitieme Avril l'an de grace mil sept cens treize et de notre regne le soixante dixieme.

LOUIS.

Par le Roy.
COLBERT.

*Treaty of navigation and commerce between Great Britain and France, concluded at Utrecht, March 31/April 11, 1713; with the supplementary convention, signed at the same place and time. Ratification of the treaty by the King of France, April 18, 1713. [Ratification by the Queen of Great Britain, same date.] Ratification of the convention by the King of France, same date.*¹

INTRODUCTION.

The attempt to negotiate a commercial treaty at the same time as the peace treaty between Great Britain and France was made by the Whig government in 1709, as well as by the Tory government in 1711-1713. In 1709 a *projet* of a commercial treaty was prepared by the Board of Trade and Plantations after consultation with merchants and consideration of their memorials and petitions. The merchants, including those engaged in the plantations trade, were eager to acquire a larger outlet for their wares in France by means of a reduction in French import duties, the removal of certain prohibitions imposed by the French government, and the securing for themselves of all the advantages of the most-favored nation.² Among the articles for whose importation into France the merchants desired to obtain more favorable terms were such colonial products as tobacco, sugar, fish, and furs.³ The merchants

¹ A note on the cover of the ratification of the convention by Louis XIV., as well as the fact that it is in the Bureau of the Ministry of Foreign Affairs in Paris, indicates that Queen Anne did not ratify the convention. The note is as follows: "Cette ratification a été renvoyée d'Utrecht par les Plenipotentiaires du Roy, ceux d'Angleterre n'en ayant point reçu de leur Cour pour l'échanger avec celle ci."

² See memorials of the year 1709 from Mr. Richard Perry and other Virginia merchants, Mr. Hollidge at Bristol, the mayor and merchants of Exeter, Mr. Samuel Lock, Mr. Henry Gautier, and other merchants concerned in the tobacco trade, preserved among the House of Lords Manuscripts, under date of May 28-30, 1713, "Papers concerning treaty of commerce with France". These memorials are noticed in *Journal of Commissioners for Trade and Plantations from February 1708/9 to March 1714/5* (1925), pp. 36, 40, 68.

³ "Considerations on the Benefit of an Open Trade with France Humbly Offered to the Hon'ble Her Majesty's Commission'rs of Commerce.

"The Treaty of Commerce between the Nation and France, made in the Year 1655, is the bottom on which the now intended treaty may be made, it being the same in most things with that between Queen Elizabeth and the French King Henry the 4th made in the Year 1606 [*sic*], since which hath been made a new tarrif in the Year 1664, much less beneficial to this nation, in regard that several merchandizes of the product and manufacture of this kingdom have thereby been loaded with heavy duties as followeth, *vizt.*

"Furs of all sorts.

"Dry codd, or poor jack, which payeth 8*li.* 10*s.* the 1000 wt. and will be a considerable article in trade in case Newfoundland be restored to Her Majesty.

"Salt codd pays 15*li.* the 12 barrells, and is of the same consequence with the above article. . . .

"Tobacco 13*li.* per 100 wt., at which rate it cannot be exported for France, that of their own plantations paying but 4*li.* the 100 wt. besides tobacco is not suffered to be

believed that the tobacco trade with France was clogged not only by high import duties but also by its management by farmers who paid the French king a considerable sum to have the sole importation of that commodity. The merchants objected to being compelled to sell exclusively to these farmers or their agents. They wished to be allowed to import tobacco, in leaf or manufactured, under a moderate duty, not exceeding that paid for tobacco of European growth, and to be at liberty to sell to anyone. They felt that under these conditions the consumption of British tobacco in France would be much increased, to the great advantage of the British colonies.⁴ A letter of October 18, 1709, from the Board of Trade to the Secretary of State, the Earl of Sunderland, enclosing the board's project of a treaty, recommended the consideration of the merchants' proposals.⁵

After the government passed from the Whigs to the Tories the attempt to frame a commercial treaty was continued. The second of the preliminary articles concluded by the Tory government with France on September 27/October 8, 1711,⁶ stipulated that a new treaty of commerce be made between the two countries. On December 19, 1711, the Board of Trade ordered that the draft of a treaty of commerce prepared in 1709 be sent to St. John.⁷ On March 18, 1712, St. John sent a draft of a treaty of commerce to the board.⁸ After consulting with merchants, lawyers, and the Commissioners of the Customs⁹ the board, on April 15, signed a letter to St. John with their observations upon the project.¹⁰ The thirteenth article of the project, embodying the demands of the merchants made in 1709, was in part as follows: "The duties upon tobacco (either if wrought or unwrought) in the leaf or wrought, to be brought into France shall from henceforward be reduced to the same moderate rate which the tobacco of the growth of any country in Europe brought into France, does or shall enjoy, neither shall the British merchants be prohibited for the time to come to sell the said tobacco to any buyer they shall think fit." The board's "observations" introduced some

brought in that country only by the farmers thereof or their agents, which being otherwise, and the importation free to everybody, would be much to the advantage of the American plantations, navigation and of Her Majesty's subjects in general. . . .

"Sugars of all sorts 15*li*. the 100 wt. this being brought to a moderate duty, would be of a great advantage to the plantations and Her Majesty's subjects. . . .

"September 1st 1709. HENRY GAUTIER." House of Lords MSS., May 28-30, 1713, "Papers concerning treaty of commerce with France."

⁴ James Hollidge's memorial, May 25, 1709, in House of Lords MSS., May 28-30, 1713, and *cf.* note 3. The tobacco trade in Maryland and Virginia was in a miserable condition, and the planters attributed this in part to the great quantity raised in Europe, particularly by the Dutch. *Cal. St. Pap. Col.*, 1712-1714, nos. 503, 688, and *cf.* *Cal. St. Pap. Col.*, 1706-1709, no. 1024.

⁵ Copy of the Commissioner of Trade's Report relating to trade with France, Oct. 18, 1709, P. R. O., St. Pap. For., France, vol. 154, f. 82.

⁶ Doc. 96.

⁷ *Journal of Commissioners, 1709-1715*, p. 324.

⁸ *Ibid.*, p. 351.

⁹ *Ibid.*, pp. 351, 352, 355-358.

¹⁰ The *projet* and observations are in House of Lords MSS., May 28-30, 1713, "Papers concerning treaty of commerce with France".

modifications into the article: "The duties on tobacco either in leaf or wrought, to be brought into France, shall from henceforward be reduced to the same moderate rate which the tobacco of the growth of any country of Europe or America, does or shall enjoy. Neither shall the British merchants be prohibited for the time to come, to sell their said tobacco to any buyer they shall think fit; *nor shall there be for the future in either kingdom, any farm or monopoly of any goods, commodities or merchandizes whatsoever.*"

Since the project made no provision for the importation of salt fish, wet or dry, from Great Britain into France, and since the French prohibited such importation, the board added an article providing therefor.¹⁰

Early in June, 1712, when the British government was on the verge of concluding a truce with France,¹¹ and anxious to reach a speedy settlement of existing disputes with that country, St. John made certain proposals to Torcy including two demands relating to commerce, which were substantially as follows:

1. That commissioners be named who should meet at London to examine and regulate the duties and impositions to be paid in each kingdom.

2. That France and Great Britain should reciprocally engage to give to the subjects of the other the privileges of the most-favored nation.¹² Louis XIV. consented to these demands.¹³

The plenipotentiaries at Utrecht and Bolingbroke at Paris in the summer of 1712 failed to bring about an adjustment of the treaty.¹⁴ The British government insisted that the British, like the Dutch, should have the benefit of the French tariff of 1664, which was lower than subsequent tariffs.¹⁵ The French however were unwilling to let either the Dutch or the British enjoy the tariff of 1664 without excepting from it four species of articles: (1) whale products; (2) woollen manufactures; (3) salt fish in barrel; (4) refined sugar. These goods were to be subject to the high tariff of 1699, or an equivalent.¹⁶ The inclusion of refined sugar in the excepted list caused grave apprehensions to a group of West Indian merchants, who argued before the Board of Trade that it would affect all their sugars except those from Jamaica, "for the Barbadoes and Leeward Islands sugars being clayed they would pass for refined".¹⁷

¹¹ See above, Doc. 97, Introduction, p. 152.

¹² Parke, *Correspondence of Bolingbroke*, II. 337 n.; same, in English, in Cobbett's *Parl. Hist.*, vol. VII., col. cxlix, no. 22.

¹³ Parke, *op. cit.*, II. 361.

¹⁴ A letter from Bolingbroke of July 21, 1712, referred to the Board of Trade the *projet* of a treaty of commerce with France, as it had been regulated at Utrecht, for further alterations. Mr. Arthur Moore took the *projet* to make his observations thereon, and on August 6 made known to the board that Bolingbroke had taken the *projet* with him to France. *Journal of Commissioners*, pp. 372, 373.

¹⁵ Parke, *op. cit.*, III. 240 n.

¹⁶ *Ibid.*, pp. 243 ff.

¹⁷ *Col. St. Pap. Col.*, 1712-1714, nos. 188, 247; *Journal of Commissioners*, p. 401.

Prior strove in vain to get the tariff of 1664 without exceptions.¹⁸ Bolingbroke clashed with the French over the question whether the British should enjoy the tariff of 1664 within a reasonable time after they should "take off their prohibitions, and reduce the duties on French goods to a proper proportion with those of the same sorts imported from other countries", or whether they should be denied the benefit of that tariff until the French commissioners should be satisfied that the British duties were proportionable to those of France.¹⁹ He secured the adoption of the former of these alternatives, at the price of yielding to the French the right of fishing and drying fish on the part of the Newfoundland coast known as the *Petit Nord*.²⁰

The treaty of commerce was signed on the same day as the treaty of peace with France, March 31/April 11, 1713, and ratified on April 7/18, by both sovereigns. Copies were sent to the governors of the American colonies for publication in those parts,²¹ and the Board of Trade expressed to Lieutenant Governor Spotswood of Virginia the hope "that in another session of Parliament if the trade of France be open'd it will give a great vent to and consequently raise the price of [tobacco]".²² The tenth article of the treaty, regarding tobacco, is printed below. A convention describing the "heads of matters" not yet mutually adjusted, and to be discussed and determined by commissioners, as provided for by the treaty, was signed and ratified on the same day as the treaty. It also contained an article about tobacco, printed below. On April 28/May 9, 1713, another convention was signed by the same plenipotentiaries, describing particularly the sorts of goods referred to in general terms in the ninth article of the treaty as being excepted from the tariff of 1664.²³

Although the treaty of commerce had been ratified by Queen Anne, yet an act of Parliament was necessary to make the eighth and ninth articles effec-

¹⁸ On Feb. 12, 1713, Prior wrote to Bolingbroke from Paris, "As to the Dutch, I have told you many a day since that the four species would never be yielded as in the tariff of 1664, the yielding it being destructive to the manufactures, fishery, and colonies of this kingdom". Parke, *op. cit.*, III. 387.

¹⁹ *Ibid.*, p. 311.

²⁰ *Ibid.*, pp. 313, 314.

²¹ *Cal. St. Pap. Col.*, 1712-1714, no. 396.

²² *Ibid.*, no. 410.

²³ The text is in Lamberty, *Mémoires*, VIII. 94, in Dumont, tom. VIII., pt. I., p. 353, and, in translation, in *A Collection of Treaties between Great Britain and other Powers, 1648-1783* (1785), II. 64, 65. Of the four articles, three refer to colonial products and are, *anglice*, as follows:

"1. Whalebone cut and prepared, fins and oils of whales, shall pay at all places of importation in the kingdom, the duties appointed by the Tariff of the 7th of December 1699. . . .

"3. Salt fish in barrels only is to be imported into the kingdom, and at all places of entrance in the kingdom, countries, and territories under the dominion of the King, even at all free ports, the duties of landing and of consumption shall be paid, which were appointed before the Tariff of 1664, and besides 40 livres per last, consisting of 12 barrels, weighing each 300 lb. for the duty of entry, which entry shall not be permitted but by St. Valery upon the Somme, Rouen, Nantz, Libourne, and Bourdeaux, and shall remain prohibited at all other harbours or ports, as well in the Ocean as in the Mediterranean.

"4. Refined sugar, in loaf or in powder, white and brown sugar candy, shall pay the duties appointed by the Tariff of 1699."

tual. The eighth article provided that the subjects of each crown should enjoy reciprocally all the privileges of the most-favored nation. The ninth article stipulated that a law should be passed in Great Britain providing that no higher duties should be paid on imports from France to Great Britain than on imports into Great Britain from any other European country; that all laws made in Great Britain since 1664 for prohibiting the importation of any goods from France should be repealed; that the French tariff of 1664 should be restored; and that commissioners should meet in London to remove the difficulties concerning the four excepted species and other unadjusted heads, and mutually to regulate the duties. It is well known that a combination of Whigs and Hanoverian Tories defeated the passage of the bill to make these articles effectual.²⁴ Nevertheless the French and British commissioners held several conferences at London in the spring and early summer of 1714 and agreed, that if the law stipulated in the ninth article were passed the treaty should have its full force; and in case it were not passed, the rest of the treaty, excepting the eighth and ninth articles, should have its effect.²⁵ But after the accession of George I. and the dismissal of Bolingbroke the attempt to conclude a treaty of commerce with France was abandoned.²⁶

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²⁴ I. S. Leadam, *Hist. of England, 1702-1760*, pp. 206-208.

²⁵ The Report of the British commissaries of June 9/20, 1714, is in *The British Merchant*, III. 279-324; cf. also *Br. Dipl. Inst.*, II. 53, 57, 58, 184-186; *Journal of Commissioners, 1709-1715*, pp. 471, 488, 493, 494, 512 ff., 517.

²⁶ Secretary Stanhope to the Earl of Stair, Sept. 21, 1715, in *Br. Dipl. Inst.*, II. 98.

mittee of Secrecy on Negotiations of Peace and Commerce", *id.*, vol. VII., app. 1, cols. lviii ff.; same, in *Reports from Committees of the House of Commons*, I.; *British Diplomatic Instructions, 1689-1789*, vol. II., *France, 1689-1721* (ed. for the Royal Historical Society by L. G. Wickham Legg, 1925), pp. 11, 33, 53, 57, 58, 98, 184-186; *Calendar of State Papers, Colonial, 1712-1714* (1926), nos. 188, 247, 248, 410; *Journal of Commissioners for Trade and Plantations, from February 1708/9 to March 1714/5* (1925), pp. 324, 351, 352, 355-358, 364, 372, 373, 428, 430, 471, 472, 475, 481, 482, 484, 488, 491-494, 512; Daniel Defoe, *The Trade with France, Italy, Spain, and Portugal considered* (1713?); *id.*, *An Essay on the Treaty of Commerce with France* (1713), in his *Works* (ed. W. Hazlitt, 1840-1843), vol. III.; *Mercator, or Commerce retrieved*; [Charles King], *op. cit.*, I. II., *passim*, III. 279-324; Charles Davenant, *Political and Commercial Works* (ed. Sir Charles Whitworth, 1771), V. 427-430; A. Boyer, *The History of Queen Anne* (1735), pp. 632-638; A. Anderson, *Historical and Chronological Deduction of the Origin of Commerce* (1787-1789), III. 50 ff.; N. Tindal, *The Continuation of Mr. Rapin's History of England* (1759-1763), IV. 303-320; J. J. Cartwright, *The Wentworth Papers, 1705-1739* (1883), pp. 333-339.

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TEXT OF TREATY.²⁷

Louis par la grace de Dieu Roy de France et de Navarre, a tous ceux qui ces presentes lettres verront, salut.²⁸

10. Les droits sur le tabac préparé ou non préparé, lorsqu'il sera apporté en France, seront moderez a l'avenir sur le même pied de reduction, dont jouit déjà, ou pourra jouir a son entrée en France le meme tabac, de quelque cru qu'il soit, de l'Europe ou de l'Amerique. Les sujets de part et d'autre payeront en France les mêmes droits sur le tabac. Ils auront une liberté egale d'en vendre, et les mesmes loix dont jouiront les marchands François memes, ou auxquelles ils seront assujettis, seront communes aux sujets de la Grande Bretagne.

Le present traité sera ratifié par le Roy Tres Chrestien et la Reyne de la Grande Bretagne, et les ratifications en seront duement echangées a Utrecht, dans l'espace de quatre semaines, ou plustost si faire se peut.

²⁷ The text of the treaty is taken from the original manuscript of the ratification by France, in the P. R. O., St. Pap. For., Treaties, no. 76.

²⁸ The names and designations of the high contracting parties, and of their plenipotentiaries, here omitted, are as in the treaty of peace, Doc. 100. The purpose of this treaty is stated as follows: "Leurs Majestes ont jugé que le moyen le plus solide, de la [paix] confirmer, estoit de procurer a leurs sujets les avantages qu'ils en doivent attendre par une mutuelle liberté, et accroissement de navigation et de commerce."

En foy de quoy nous soussignez ambassadeurs extraordinaires et plenipotentiaires du Roy Tres Chrestien et de la Reyne de la Grande Bretagne avons signé le present traité de nostre main et y avons fait apposer les cachetes de nos armes. Fait a Utrecht le onzieme Avril de l'an mil sept cens treize.

HUXELLES.
MESNAGER.

JOH. BRISTOL, C. P. S.
STRAFFORD.

Nous ayant agreable le susdit traité de commerce, navigation et marine en tous et chacun les points et articles qui y sont contenus et declarez, avons iceux, tant pour nous, que pour nos heritiers, successeurs, royaumes, pays, terres, seigneuries et sujets, accepté, approuvé, ratifié, et confirmé, et par ces presentes signées de nostre main, acceptons, approuvons, ratifions et confirmons et le tout promettons en foy et parole de Roy, sous l'obligation et hypoteque de tous et en chacun nos biens presens et a venir, garder, observer, inviolablement, sans jamais aller ny venir au contraire, directement ou indirectement en quelque sorte et manière que ce soit. En temoin [etc.]. Donné [à] Versailles le dix huitieme avril, l'an de grace mil sept cens treize, et de nostre regne le soixante dixieme.

LOUIS.

Par le Roy.
COLBERT.

TEXT OF SUPPLEMENTARY CONVENTION.²⁹

Louis par la grace de Dieu, Roy de France et de Navarre à tous ceux qui ces présentes lettres verront, Salut.³⁰ . . .

Soit notoire a tous, que comme dans l'article neuvieme du traité de commerce entre le Serenissime Roy tres Chrestien et la Serenissime Reyne de la Grande Bretagne, conclu aujourd huy par les Ambassadeurs Extraordinaires plenipotentiaires de leurs Majestez, il est fait mention de quelques points et articles proposez de la part de la Grande Bretagne qui jusqu' a present n'ont pu estre ajustez de part et d'autre, de maniere qu'on a trouvé convenable de les renvoyer a des Commissaires pour les discuter et les regler :

A cct effet nous soussignez Ambassadeurs Extraordinaires plenipotentiaires de leurs Majestez, afin de determiner certainement quels sont ces points et articles qui doivent estre renvoyez aux Commissaires Nous avons resolu d'en faire dans cet escrit la designation speciale, declarant qu'il ny en a point d'autres que ceux qui suivent.

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3. Il ne sera plus deffendu aux marchands Anglois a l'avenir de vendre leur tabac a l'achepteur auquel ils trouveront bon de le vendre; et a cette fin le bail fait avec les fermiers qui ont racheté les droits sur ladite herbe, cessera et ne pourra estre retably dans la suite.

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En foy de quoy, nous ambassadeurs extraordinaires et plenipotentiaires de sa Majesté le Roy tres Chrestien et de sa Majesté la Reyne de la Grande

²⁹ The text of the convention is taken from the original manuscript of the ratification by Louis XIV. in the Bureau of the Ministry of Foreign Affairs in Paris. Cf. above, note 1.

³⁰ The names and designations of the plenipotentiaries, here omitted, are as in the treaty of peace, Doc. 100.

Bretagne avons signé les presens articles de nostre main et y avons fait apposer les cachets de nos armes. Fait a Utrecht le onzieme avril mil sept cens treize.

HUXELLES.
MESNAGER.

JOH. BRISTOL, C. P. S.
STRAFFORD.

Nous ayant agreable la susdite convention en tous et chacun les points et articles qui y sont contenus et declarez, avons iceux loué, approuvé et ratifié et par ces presentes signées de nostre main louons, approuvons et ratifions, promettant en foy et parolle de Roy de les accomplir, observer, et faire observer, sincerement et de bonne foy sans souffrir qu'il soit jamais allé directement ou indirectement au contraire ; pour quelque cause et occasion que ce puisse estre. En temoin de quoy nous avons fait mettre nostre seel a cesdites presentes. Donné a Versailles le dixhuitieme jour d'Avril l'an de grace mil sept cens treize, et de nostre regne le soixante dixieme.

LOUIS.

Par le Roy.
COLBERT.

*Treaty of peace between Great Britain and Spain, concluded at Utrecht, July 2/13, 1713. Ratification by Spain, August 4, 1713, N. S.*¹

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TEXT.²

Don Phelipe por la gracia de Dios rey de Castilla, de Leon, de Aragon, de las dos Sicileas, de Hierusalem, de Navarra, de Granada, de Toledo, de Valencia, de Galicia, de Mallorca, de Sevilla, de Cerdeña, de Cordova, de Corsega, de Murcia, de Jaen, de los Algarves, de Algecira, de Gibraltar, de las Islas de Canaria, de las Indias Orientales y Occidentales, islas y tierra firme del Mar Oceano, archiduque de Austria, duque de Borgoña, de Bravante y Milan, conde de Abspurg, de Flandes, Tirol, y Barcelona, señor de Viscaia y de Molina, etc. Por quanto haviendose ajustado, concluido, y firmado, en la villa de Utrech, en trece de Jullio de este presente año, por mis embaxadores extrahordinarios plenipotenciarios y los de la Serenissima Reyna de la

¹ This and the subsequent documents were left incomplete by Miss Davenport. The bibliography which follows is manifestly unfinished; but the bibliographies given under the headings of Docs. 100 and 101 will in many respects suffice. No introduction had been written.

² The text is taken from the Spanish ratification in the P. R. O., St. Pap. For., Treaties, no. 475.

Gran Bretaña, mi mui chara y mui amada hermana y prima, un tratado de paz y amistad, cuio thenor en idioma Latino es como se sigue :

Cum Supremo rerum omnium Moderatori placuerit, post bellum gravissimum quod universum quasi Christianum orbem tot per annos caede et sanguine funestavit, pro divina sua clementia, principum belligerantium animos armorum contentione diu exagitatos ad pacis tandem et concordiae studia deflexos componere ; cumque Serenissimus ac Potentissimus princeps et dominus Philippus Quintus, Dei gratia Hispaniarum rex Catholicus, etc., et Serenissima ac Potentissima princeps et domina Anna, Dei gratia Magnae Britanniae, Franciae et Hyberniae regina, etc., nihil magis in votis habeant, nihil opera vehementiori assequi connitantur, quam ut perantiqua foederum atque amicitiae inter Hispanos Britannosque vincula non solum reficiantur, verum etiam novis necessitudinum commodorumque hinc inde firmamentis fortius astringantur atque ad longissimam usque posteritatem nexu quasi indissolubili transmittantur, ad negotium tam salutare ac tot nominibus exoptatum feliciter tandem conficiendum, legatos extraordinarios ac plenipotentarios utrinque suos nominaverunt et mandatis sufficientibus instruxerunt, scilicet : a parte sua Rex Catholicus illustrissimum atque excellentissimum dominum Dominum Franciscum Mariam de Paula Tellez et Giron, ducem de Ossuna, comitem de Uruegna, marchionem de Peñafiel, magnum Hispaniae primae classis, majorem regis cubicularium, in Castellae regnis notarium majorem, ordinis Calatravae commendatorem, et majorem in clavibus, similiterque in Divi Jacobi ordine commendatorem, unum ex grandibus regi Catholico Philippo Quinto in cubicula assistantibus, in regis exercitibus ducem generalem, et in regalibus corporis custodibus ducem primum, ut et illustrissimum atque excellentissimum Dominum Isidorem Cazado de Azevedo de Rosales, marchionem de Monteleone, vicecomitem de Alcazar Real, in supremo Indiarum consilio suae Regiae Catholicae Majestatis senatorem, et unum ex nobilibus regis cubiculariis ; a parte autem sua Regina Magnae Britanniae reverendum admodum Johannem, permissione divina episcopum Bristolensem, privati Angliae sigilli custodem, Regiae Majestati a consiliis intimis, decanum Windesoriensem, et nobilissimi ordinis Periscelidis registrarium, ut et nobilissimum, illustrissimum, atque excellentissimum dominum Dominum Thomam comitem de Strafford, vicecomitem Wentworth de Wentworth Woodhouse et de Staineborough, baronem de Raby, Regiae suae Majestati a consiliis intimis, ejusdem legatum extraordinarium et plenipotentiarium ad Celsos et Praepotentes Dominos Ordines Generales Uniti Belgii, Regiae suae Majestatis dimachorum legionis (vulgo regiment) tribunum et exercituum regionum locumtenentem generalem, primum Admiralitatis Magnae Britanniae et Hyberniae dominum commissarium, ut et nobilissimi ordinis Periscelidis equitem ; qui quidem legati extraordinarii ac plenipotentarii ad tenorem eorum quae facta sunt, et de quibus in aulis, tam Londini quam Madriti, per minister utrinque conventum est, in pacis atque amicitiae leges insequentes consenserunt conveneruntque.

I. Pax sit Christiana, universalis, et perpetua, veraque amicitia inter Serenissimum ac Potentissimum principem Philippum Quintum Hispaniarum regem Catholicum, et Serenissimam ac Potentissimam principem Annam, Magnae Britanniae reginam, eorumque haeredes et successores, nec non utriusque partis, regna, status, ditiones, et provincias ubicunque sitas eorumque subditos, eaque ita sincere servetur et colatur, ut neutra pars ad alterius perniciem vel detrimentum, sub quolibet colore, quidquam moliatur, aut molientibus seu quodvis damnum inferre volentibus ullum auxilium, quocunque nomine veniat, praestare aut juvare quavis ratione possit aut debeat.

E contra autem tenebuntur Regiae suae Majestates alter alterius utilitatem, honorem, ac commodum promovere eoque omni studio consilia sua dirigere, quo mutuis amicitiae documentis paci nunc initae nova in dies accedant firmamenta.

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8. Liber sit usus navigationis et commerciorum inter utriusque regni subditos prout jam olim erat tempore pacis, et ante nuperrimi belli denuntiationem, regnante Catholico Hispaniarum rege Carolo Secundo, gloriosae memoriae, secundum amicitiae, confoederationis, et commerciorum pacta, quae quondam inita erant inter utramque nationem, secundum consuetudines antiquas, literas patentes, schedulas, aliaque acta speciatim facta, atque etiam secundum tractatum vel tractatus commerciorum, qui Madriti jam nunc confecti aut mox conficiendi sunt. Cum vero inter alias conditiones pacis generalis praecipua quaedam et fundamentalis regula communi consensu stabilita sit, ut navigationis et commerciorum usus ad Indias Occidentales Hispanici juris eodem in statu maneat, quo fuit tempore praefati regis Catholici Caroli Secundi, quo igitur regula haec fide inviolabili et modo non temerando in posterum observetur, adeoque praeveniantur amoveanturque omnes circa istoc negotium diffidentiae suspicionumque causae, conventum speciatim statutumque est, quod sive Gallis seu nationi cuilibetunque, quovis nomine aut quocunque sub praetextu, directe vel indirecte, nulla unquam licentia nullaque omnino facultas dabitur navigandi, mercaturam exercendi, aut nigritas, bona, mercimonia, vel res quascunque in ditiones Americanas coronae Hispaniae parentes introducendi, praeterquam quod tractatu vel tractatibus commerciorum supradictis, et juribus ac privilegiis in pactione quadam concessis, vulgo el Assiento de Negros nuncupata, cujus articulo duodecimo mentio facta est, concordatum fuerit, except etiam quidquid Rex Catholicus praedictus, vel heredes successoresve ejus, pacto seu pactis quibusvis de introductione nigritarum in Indias Occidentales Hispaniae obtemperantes, incundis spondebunt, postquam pactio sive el Asiento de Negros supradicta determinata fuerit. Utque de navigatione et commercio ad Indias Occidentales, ut supra dictum est, firmitus et uberius undiquaque praecautum sit, hisce praeterea conventum concordatumque est quod neque Rex Catholicus neque haeredes successoresque ejus quilibetunque ullas ditiones, dominia, sive territoria in America Hispanici juris, vel ullam earundem partem, seu Gallis sive nationi aliae cuiunque vendent, cedent, oppignorabunt, transferent, aut illo modo ullove sub nomine ab se et corona Hispanica alienabunt. E contra autem quo ditiones Americanae Hispanis obtemperantes sartae tectae conserventur, spondet Regina Magnae Britanniae sese operam daturam opemque laturam Hispanis ut limites antiqui ditionum suarum Americanarum restituantur figanturque, prout Regis Catholici Caroli Secundi supradicti tempore steterant, si quidem compertum fuerit ullo modo ullove sub praetextu eosdem in parte quacunque effractos imminutosve esse ex quo antedictus Rex Catholicus Carolus Secundus mortem obierit.

9. Convenum insuper et statutum est pro regula generali, quod omnes et singuli utriusque regni subditi, in omnibus terris et locis utrinque, circa omnia jura, impositiones, aut vectigalia quaecumque, personas, merces et mercimonia, naves, nautas, navigationem et commercia concernentia, iisdem ad minimum privilegiis, libertatibus, et immunitatibus utentur, fruuntur, parique favore in omnibus gaudebunt, quibus Galliarum subditi aut amicissima quaevis gens extera utuntur fruuntur gaudentque aut ullo dehinc tempore uti, frui, aut gaudere possint.

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12. Rex Catholicus hisce dat porro conceditque Majestati suae Britannicae et societati subditorum suorum ad id constitutae, exclusis tam subditis Hispanicis quam aliis omnibus, pactionem de introducendis nigris in partes diversas ditionum Majestatis suae Catholicae in America, vulgo el pacto de el Asiento de Negros, per triginta annorum spatium continuata serie, initio facto a primo die mensis Maii anno millesimo septingentesimo tertio, iisdem sub conditionibus quibus eadem fruebantur Galli aut ullo tempore frui poterant vel debuerant, una cum tractu sive tractibus terrae a dicto Rege Catholico designandis, et societati praefatae, vulgo la Compañia de el Asiento, tribuendis in loco quodam commodo ad fluvium Rio de la Plata nominatum (nullis vectigalibus redivisus a dicta societate durante pactionis supramemoratae tempore, haud tamen diutius, eo nomine pendendis). Quinetiam ea societatis praedictae sedes sive tractus terrae idonei erunt sufficientque ut ibi colatur seraturque et pecora pascantur ad nutriendos eos, qui dictae societati serviunt eorumque nigras; utque ibidem in tuto custodiantur dictae nigras quoad divenditi fuerint, atque insuper ut ibi naves ad dictam societatem spectantes prope ad terram appellant et ab omni periculo tectae conserventur. Regi autem Catholico fas semper sit in dicto loco seu sede officarium constituere, qui ne quid admittatur facitetur regiis suis commodis contrarium observet. Omnesque qui eo loci res dictae societatis curae habent aut qui ad eam pertinent praedicti officarii inspectioni subjecti erunt quoad ea omnia ad terrae tractus supramemoratos spectant. Sin autem dubia quaedam, difficultates, sive controversiae suboriantur inter dictum officarium et rerum societatis saepe memoratae curatores, ad urbis Buenos Ayres dictae praefectum deferentur ab eodem dijudicandae. Voluit praeterea Rex Catholicus alia quaedam commoda eximia dictae societati concedere, quae plenius fusiusque explicantur in pactione illa, el Asiento de Negros nuncupata, quae facta et conclusa fuit Madriti vigesimo sexto die mensis Martii anni praesentis 1713. Quae quidem pactio, sive el Asiento de Negros, omnesque clausulae, conditiones, privilegia atque immunitates in eadem contentae, quaeque huic articulo haudquaquam contrariae sunt, censentur ac censebuntur pars esse hujusce tractatus, eodem modo ac si ad verbum hic insertae fuissent.

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15. Regiae suae Majestates utrinque renovant confirmantque tractatus omnes pacis, amicitiae, confederationis, et commerciorum inter coronas Hispaniae atque Magnae Britanniae initos antehac et conclusos, ac praesenti hoc foedere renovantur confirmanturque dicti tractatus, modo tam amplo explicatoque ac si jam nunc sigillatim inserti fuissent, in quantum scilicet tractatibus pacis ac commerciorum novissime factis signisque contrarii haud reperiuntur. Praesertim vero hoc pacis tractatu confirmantur corroboranturque pacta, foedera, conventionesque, tam quae commerciorum et navigationis usum in Europa alibique quam quae nigrarum introductionem in Americam Hispanicam spectant, quaeque Madriti inter utramque nationem aut jam initae sunt aut quantocius ineundae. Quandoquidem vero ex parte Hispaniae urgetur jura quaedam piscationis ad insulam Terrae Novae exercendae ad Cantabros aliosve Regis Catholici pertinere, consentit convenitque Majestas sua Britannica, ut privilegia omnia quae Cantabri aliive Hispaniae populi jure sibi vindicare poterunt ipsis sarta tecta conserventur.

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26. Praesentis tractatus solemnes et rite confectae ratificationes intra sex hebdomadam spatium a die subscriptionis computandum, vel citius si fieri poterit, utrinque exhibeantur, et reciproce debiteque commutentur.

In quorum omnium fidem legati extraordinarii ac plenipotentarii supra-
memorati, exhibitis utrinque ac rite commutatis plenipotentiarum suarum tabu-
lis, presentem hunc tractatum subscripserunt et sigillis suis muniverunt,
Trajecti ad Rhenum die $\frac{\text{secundo}}{\text{decimo tertio}}$ mensis Julii anno Domini millesimo
septigentessimo decimo tercio.

JOH : BRISTOL : C. P. S.
STRAFFORD.

El Duque de OSUNA.
El Marques de MONTELEON.

El qual tratado, aqui escrito é inserto como arriva queda referido, despues
de haverle visto y examinado maduramente, palabra por palabra, en mi conse-
jo, he resuelto aprobarle y ratificarle, salvo lo tocante á la villa de Dantcik,
con la qual me reservo ajustar y arreglarne en la paz que se concluia con el
Imperio. Por tanto en virtud de la presente, yo por mi, mis herederos y
subcesores, como tambien por los vasallos, subditos, y avitantes en todos mis
regnos y señorios, apruebo y ratifico todo lo expresado en el mencionado
tractado, en la mejor y mas amplia forma que puedo, y doi por lleno, firme,
y valedero todo lo que en el se contiene, salvo como va expresado lo tocante
á la villa de Dantcik, con la qual me reservo ajustar y arreglarne en la paz
que se concluia con el Imperio: I prometo, en fee y palabra de rey, y por
todos mis subcesores y herederos, seguirle y complirle inviolablemente, segun
su forma y tenor, y mandarle observar y cumplir de la misma manera, como
si yo lo hubiera tratado por mi propria persona, sin hazer ni dejar hacer en
qualquier modo que sea ni permitir que se haga cosa alguna en contrario, y
que si se hiciere alguna contravencion de lo contenido en dicho tratado, la
mandare reparar con efecto sin dificultad ni dilacion, castigando y mandando
castigar los delinquentes, obligando para el efecto de lo suso dicho todos y
cada uno de mis reynos, payses, y señorios, assi mismo todos otros mis venes
presentes y venideros, como tambien mis herederos y subcesores sin exceptuar
nada, limitando solo lo que va mencionado quanto á la villa de Dantzik. I para
fermeza desta obligacion renuncio todas las leyes, costumbres, y todas otras
cossas contrarias á ello. En fee de lo qual mande despachar la presente firmada
de mi mano, sellada con mi sello secreto, y refrendada de mi infrascripto
Secretario de Estado. Dada en Madrid á quatro de Agosto de mill setencientos
y trece años.

YO EL REY.

MANUEL DE VADILLO Y VELASCO.

TRANSLATION.

Philip, by the grace of God king of Castile, Leon, Aragon, the Two
Sicilies, Jerusalem, Navarre, Granada, Toledo, Valencia, Galicia, Majorca,
Seville, Sardinia, Cordova, Corsica, Murcia, Jaen, the two Algarves, Alge-
ciras, Gibraltar, the Canary Islands, the East and West Indies, the islands
and mainland of the Ocean, archduke of Austria, duke of Burgundy, Brabant,
and Milan, count of Hapsburg, Flanders, Tyrol, and Barcelona, lord of
Biscaya and Molina, etc. Whereas there has been concerted, concluded, and
signed, in the city of Utrecht, on the thirteenth of July this present year,
by my extraordinary plenipotentary ambassadors and those of the Most Serene
Queen of Great Britain, my very dear and very beloved sister and cousin, a
treaty of peace and friendship, the tenor of which in the Latin language, is
as follows:

Whereas it has pleased the Supreme Ruler of all things, after a most
grievous war, which for so many years has laid desolate almost the whole

Christian world with slaughter and bloodshed, of his divine clemency to dispose at length the minds of the warring princes, minds long inflamed with the conflict of arms, to thoughts of peace and concord; and whereas the Most Serene and Most Potent prince and lord Philip the Fifth, by the grace of God Catholic king of Spain, etc., and the Most Serene and Most Potent princess and lady Anne, by the grace of God queen of Great Britain, France, and Ireland, etc., wish for nothing more heartily, and endeavor nothing more earnestly, than that the ancient bonds of alliance and friendship between the Spanish and British nations should not only be renewed but also more strongly knit together by fresh engagements of obligations and interest on both sides, and transmitted indissoluble to all posterity, they, in order at last to finish happily so salutary and so very durable a work, have nominated on each side their ambassadors extraordinary and plenipotentiary, and have instructed them with sufficient orders: that is to say, the Catholic King on his part the most illustrious and most excellent lord Don Francisco Maria de Paula Tellez and Giron, duke of Oñuna, count of Uruña, marquis of Peñafiel, grandee of Spain of the first class, high chamberlain of the king, chief notary of the kingdoms of Castile, commander and grand clervo of the Order of Calatrava, and likewise commander of the Order of Santiago, one of the grandees of the chamber to the Catholic King Philip the Fifth, general in his armies, and first captain of the royal body-guards, and the most illustrious and most excellent Don Isidoro Cazado de Azevedo de Rosales, marquis of Monteleone, viscount of Alcazar Real, councillor of his royal Catholic Majesty in the Supreme Council of the Indies, and one of the noble chamberlains of the king; and the Queen of Great Britain, on her part, the Right Reverend John, by divine permission bishop of Bristol, keeper of the privy seal of England, privy councillor to her royal Majesty, dean of Windsor, and register of the most noble Order of the Garter, and the most noble, most illustrious, and most excellent lord Thomas, earl of Strafford, viscount Wentworth of Wentworth-Woodhouse and of Staineborough, baron of Raby, privy councillor to her royal Majesty, her ambassador extraordinary and plenipotentiary to the High and Mighty lords the States General of the United Netherlands, colonel of her Majesty's royal regiment of dragoons, lieutenant-general of her Majesty's armies, first lord commissioner of the admiralty of Great Britain and Ireland, and knight of the most noble Order of the Garter; which ambassadors extraordinary and plenipotentiary have consented and agreed to the following conditions of peace and friendship, to the same effect as what has been done and agreed to at the courts of London and Madrid by ministers on each side.

I. That there be a Christian universal peace, and a perpetual and true friendship between the Most Serene and most Potent Prince Philip the Fifth, Catholic king of Spain, and the Most Serene and Most Potent Princess Anne, Queen of Great Britain, and their heirs and successors, and also the kingdoms, states, dominions, and provinces of both parties, wheresoever situated, and their subjects; and that the same be so sincerely preserved and cultivated, that neither party do, under any color whatever, attempt anything to the destruction or detriment of the other, nor may or should in any manner lend any aid, by what name soever it be called, to those who attempt the same, or who endeavour to do any damage. On the contrary, their royal Majesties shall be obliged the one to promote the advantage, honor, and interest of the other, and to direct their counsels to that end with all care, that by mutual proofs of friendship, the peace which is now made may daily receive new additions of strength.

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8. That there be a free use of navigation and commerce between the subjects of the two kingdoms, as it was heretofore, in time of peace, and before the declaration of this late war, in the reign of Charles the Second, of glorious memory, Catholic king of Spain, according to the treaties of friendship, alliance, and commerce, which were formerly made between the two nations, according to ancient customs, letters patent, cedulas, and other particular acts, and also according to the treaty or treaties of commerce which have now been, or will forthwith be made at Madrid. Since however among other conditions of the general peace, it has been by common consent established as a chief and fundamental rule that the exercise of navigation and commerce to the Spanish West Indies should remain in the same state as it was in the time of the aforesaid King Charles the Second, that therefore this rule may hereafter be observed with inviolable faith and in a manner never to be broken, and thereby all causes of distrust and suspicion concerning that matter may be prevented and removed, it is especially agreed and concluded that no licence, nor any permission at all, shall at any time be given either to the French or to any nation whatever, in any name or under any pretence, directly or indirectly, to sail, to traffic, or to introduce negroes, goods, merchandises, or any things whatsoever, into the dominions subject to the crown of Spain in America, except what may be agreed upon by the treaty or treaties of commerce abovesaid, and the rights and privileges granted in a certain convention, commonly called the *Asiento de Negros*, whereof mention is made in the twelfth article, and except also whatsoever the said Catholic King, or his heirs or successors, shall promise by any contract or contracts for the introduction of negroes into the Spanish West Indies, that shall be made after that the convention of the *Asiento de Negros* abovementioned shall have been determined. And that more strong and full precautions may be taken on both sides, as abovesaid, concerning the navigation and commerce to the West Indies, it is hereby further agreed and concluded that neither the Catholic King, nor any of his heirs and successors whatsoever, shall sell, yield, pawn, transfer, or by any means or under any name, alienate from them and from the crown of Spain, to the French or to any other nations whatever, any jurisdictions, dominions, or territories, or any part thereof, belonging to Spain in America. On the contrary, that the Spanish dominions in America may be preserved whole and entire, the Queen of Great Britain engages that she will endeavor and give assistance to the Spaniards, that the ancient limits of their dominions in America be restored and settled as they stood in the time of the abovesaid Catholic King Charles the Second, if it shall appear that they have in any manner, or under any pretext, been broken into or lessened in any part, since the death of the aforesaid Catholic King Charles the Second.

9. It is further agreed and concluded as a general rule that all and singular the subjects of each kingdom shall in all countries and places on both sides have and enjoy at least the same privileges, liberties, and immunities, as to all duties, impositions, or customs whatsoever, relating to persons, goods, and merchandises, ships, freight, seamen, navigation, and commerce; and shall have the like favor in all things as the subjects of France, or any other foreign nation, the most favored, have, possess, and enjoy, or at any time hereafter may have, possess, or enjoy.

12. The Catholic King doth furthermore hereby give and grant to her Britannic Majesty, and to the company of her subjects constituted for that purpose, as well the subjects of Spain as all others being excluded, the con-

tract for introducing negroes into the various parts of the dominions of his Catholic Majesty in America, commonly called *el Pacto de el Asiento de Negros*, for the space of thirty consecutive years beginning from the first day of the month of May in the year 1713, under the same conditions on which the French enjoyed it, or at any time might or were entitled to enjoy the same, together with a tract or tracts of land to be allotted by the said Catholic King and to be granted to the company aforesaid, commonly called *la Compañía de el Asiento*, in some convenient place on the River of Plata, no duties or revenues being payable by the said company on that account during the time of the abovementioned contract, and no longer. And this settlement of the said society, or those tracts of land, shall be proper and sufficient for planting and sowing and for the feeding of cattle for the subsistence of those who are in the service of the said company, and of their negroes; and that the said negroes may be there kept in safety until they are sold; and moreover, that the ships belonging to the said company may come close to land and be made secure from any danger. But it shall always be lawful for the Catholic King to appoint an officer in the said place or settlement, who may take care that nothing be done or practised contrary to his royal interests. And all who manage the affairs of the said company there, or belong to it, shall be subject to the inspection of the aforesaid officer as to all matters relating to the tracts of land abovementioned. But if any doubts, difficulties, or controversies should arise between the said officer and the managers for the said company, they shall be referred to the determination of the governor of Buenos Aires. The Catholic King has been likewise pleased to grant to the said company several other extraordinary advantages, which are more fully and amply explained in the contract called the *Assiento de Negros*, made and concluded at Madrid on the 26th day of the month of March of this present year 1713. Which contract or *Assiento de Negros*, and all the clauses, conditions, privileges, and immunities contained therein, and which are not contrary to this article, are and shall be deemed and taken to be part of this treaty, in the same manner as if they had been here inserted word for word.

15. Their royal Majesties on both parts renew and confirm all treaties of peace, friendship, alliance, and commerce, made heretofore and concluded between the crowns of Great Britain and Spain, and the said treaties are hereby renewed and confirmed in as full and ample manner as if they were now particularly here inserted; that is to say, as far as they are not found to be contrary to the treaties of peace and commerce which were the last made and signed. And especially by this treaty those agreements, treaties, and conventions are confirmed and strengthened which relate as well to the exercise of commerce and navigation in Europe, and elsewhere, as to the introduction of negroes into the Spanish West Indies, and which either are already made, or will forthwith be made between both nations at Madrid. And whereas it is insisted on the part of Spain that certain rights of fishing at the island of Newfoundland belong to the Guipuzcoans, or other subjects of the Catholic King, her Britannic Majesty consents and agrees that all such privileges as the Guipuzcoans and other people of Spain are able to claim by right, shall be allowed and preserved to them.

26. Solemn ratifications of this treaty, drawn up in the proper form, shall be exhibited and reciprocally and duly exchanged within six weeks, to be computed from the day of signing, or sooner if possible.

In witness of all the above the ambassadors extraordinary and plenipotentiary abovenamed, having on each side exhibited and duly exchanged their letters of full powers, have signed and sealed this present treaty at Utrecht on the $\frac{\text{second}}{\text{thirteenth}}$ day of the month of July, in the year of our Lord one thousand seven hundred and thirteen.

JOH. BRISTOL, C. P. S.
STRAFFORD.

The Duke de OSUNA.
The Marquis de MONTELEON.

Which treaty, here written and inserted as appears above, I, after having seen and examined it maturely, word by word, in my council, have resolved to approve and ratify, excepting what relates to the city of Danzig, which I reserve for adjustment and regulation in the peace which is being concerted with the Empire. Wherefore in virtue of these presents I, for myself, my heirs and successors, and also for the vassals, subjects, and inhabitants of all my kingdoms and lordships, approve and ratify all that is set forth in the said treaty, in the best and most ample form, and declare all that it contains to be full, firm, and valid, saving, as above stated, what relates to the city of Danzig, which is reserved for adjustment and regulation in the peace which is being concluded with the Empire; and I promise, on the faith and word of a king, and for all my successors and heirs, to observe and fulfill it inviolably, according to its form and tenor, and to cause it to be observed and fulfilled in the same manner as if I had concerted it in my proper person, without doing or in any manner leaving or permitting to be done anything contrary to it, and if anything contrary to what is contained in the said treaty shall be done, I will cause it to be remedied effectively and readily and promptly, punishing and causing to be punished those offending, and by the effect of the above placing under obligation all and each of my kingdoms, countries, and lordships, and also all other of my possessions, present and future, as well as my heirs and successors, without excepting anything, limiting only what has been mentioned as to the city of Danzig. And to confirm this obligation I renounce all laws, customs, and all other things contrary thereto. In testimony whereof I have ordered the present to be executed, being confirmed by my hand, sealed with my privy seal, and attested by my undersigned Secretary of State. Given in Madrid on the fourth of August in the year one thousand seven hundred and thirteen.

I THE KING.
MANUEL DE VADILLO Y VELASCO.

*Spanish declaration correcting the assiento (of March 26, 1713),
signed at Utrecht, July 13, 1713, N. S.*

TEXT.¹

Declaratio super Errore in Pactione de Assiento nuncupata.

Quandoquidem ex articulo 31^{mo} pactionis vulgo *El Asiento de Negros*, Madriti 26^{to} die mensis Martii anni praesentis 1713 conclusae,² Majestati suae Britannicae constiterit errorem quandam subrepsisse in eodem perscribendo, quippe solutio pecuniarum rependenda, cujus ibi mentio facta est, intellegi debet de his centum millibus scutorum sive $\frac{8}{3}$ escudos, qui in antecessum solvendi sunt vi 3ⁱⁱ articuli pactionis praefatae: quemadmodum etiam provisum fuit 31^{mo} Articulo pactionis *El Assiento* nominatae, quae Gallicae societati Guineensi³ concessa fuit, Adeo ut ex articulo dictae pactionis Gallicae, ut exemplari a Domino Gilligan exhibito, plane liquet, articulum supra indigitatum in hunc sensum exprimi debuisse, sibi rependere possint dictam argenti summam ultra quod in antecessum solverint pro quarta parte, quae ad Majestatem suam Catholicam in dicta pactione sive *El Assiento* spectat.

Isthoc porro hinc uberius apparet quod alioquin dictus articulus 31^{mus} nullius omnino usus foret, quippe quod plene et sufficienter articulo 30^{mo} praecedente de repensione pecuniae pro quarta parte ad Regem Catholicum pertinente solvendae provisum sit.

Conveniunt itaque consentiuntque dictae Majestatis suae Catholicae plenipotentiarii, quod si habita examinatione error praememoratus subesse constiterit, eundem corrigendum esse scripto quodam authentico debita forma confecto intra bimestre spatium a tractatus pacis ratihabitione.

In quorum fidem praesentes manibus suis subscriptas dicti domini legati S. Regiae Majestatis Catholicae, sigillis quoque suis communiri fecerunt. Utrajecti ad Rhenum die decimo tertio mensis Julii anno Domini millesimo septingentesimo decimo tertio.

El Duque de OSUNA.

El Marques de MONTELEON.

TRANSLATION.

Declaration concerning an error in the contract called the Assiento.

Whereas in article 31 of the contract commonly called *El Asiento de Negros*, concluded at Madrid on March 26 of the present year, her British Majesty has become aware that, in writing it out, a certain error has crept into it, namely, that the reimbursement of money, mentioned there, should be understood of the 200,000 pieces of eight, or *escudos*, which are to be

¹ The text is taken from the original manuscript in the P. R. O., St. Pap. For., Treaties, no. 474.

² Doc. 98.

³ Doc. 89.

advanced by virtue of the third article of the aforesaid contract, as was also provided by the thirty-first article of the pact called *El Asiento* granted to the French Guinea Company, so that, as clearly appears from the article of the said French pact, as from the copy shown by Don Gilligan, the article above indicated ought to have been expressed in this sense, that they may be able to repay to themselves the said sum of money over and above what they have paid in advance for the fourth part which pertains to his Catholic Majesty in the said pact or Assiento, [and]

This appears even more fully from the fact that otherwise the said article 31 would be of no use at all, since in the preceding article 30 full and complete provision is made for repayment of the money that is to be paid for the fourth part pertaining to the Catholic King.

Therefore the plenipotentiaries of his said Catholic Majesty agree and consent that if after examination the aforesaid error shall be found to exist, the same should be corrected by a certain authentic writing, made in due form, within two months after the ratification of the treaty of peace.

In faith whereof, the said legates of his Royal Catholic Majesty have caused these presents, signed by their hands, to be further secured by their seals.

At Utrecht, on the thirteenth day of the month of July in the year of our Lord seventeen hundred and thirteen.

The Duke of OSUNA.

The Marquis of MONTELEON.

Treaty of commerce between Great Britain and Spain, concluded at Utrecht, November 28/December 9, 1713. [Ratification by Spain, January 10/21, 1713/4. Ratification by Great Britain, February 7, 1713/4, O. S.]

TEXT.¹

Don Phelipe, por la gracia de Dios rey de Castilla, de Leon, de Aragon, de las dos Sicilias, de Hierusalem, de Navarra, de Granada, de Toledo, de Valencia, de Galicia, de Mallorca, de Sevilla, de Serdeña, de Cordova, de Corsega, de Murcia, de Jaen, de los Algarves, de Algezira, de Gibraltar, de las islas de Canaria, de las Indias Orientales y Occidentales, islas y tierra firme del Mar Oceano, archiduque de Austria, duque de Borgoña, de Brabante y Milan, conde de Abspurg, de Flandes, Tirol, y Barcelona, señor de Vizcaya y de Molina, etc. Por quanto havindose ajustado, concluido, y firmado en la Villa de Utrech en nueve de diziembre del año proximo pasado de mil setecientos y trece por mis embaxadores extraordinarios plenipotenciarios y el Obispo de Bristol, embaxador extraordinario plenipotenciario de la Serenissima Reyna de la Gran Bretaña, mi mui cara y mui amada hermana y prima, un tratado de comercio entre las coronas de España e Inglaterra, cuio tenor en idioma Latino es como se sigue.

I. Tractatus pacis, commerciorum, et confoederationis inter coronas Hispaniae et Magnae Britanniae Madriti die $\frac{\text{vigesimo tertio}}{\text{decimo tertio}}$ mensis Maii anno Domini 1667 conclusus per hunc tractatum ratihabetur et confirmatur, eundemque una cum schedulis regiiis sive ordinationibus eidem annexis ad majus robur et tutamen de verbo ad verbum hic loci inserere placuit prout sequitur.²

Spontend mutuo Regiae suae Majestates, sese omnes et singulos tractatus antecedentis articulos, et quaecunque in iisdem ut et schedulis annexis privilegia, concessiones, concordata, aliave cujuscunque generis ad subditos utrinque redundantia beneficia continentur, bona fide praestituras et adimpleturas, utque a ministris suis et officialibus aliisque subditis praestentur et adimpleantur, omni tempore curaturas, ita ut plenario eorundem omnium et singulorum effectu, iis solummodo exceptis de quibus in sequentibus articulis ad reciprocam satisfactionem aliter statutum est, ut et eorum omnium quae in articulis sequentibus continentur subditi hinc inde gaudeant in posterum et fruuntur. Confirmatur insuper et de novo ratihabetur tractatus anno 1670 inter coronas Hispaniae et Magnae Britanniae pro tollendis disidiis de proederationibus restringendis stabiliendaque pace in America inter dictas coronas

¹ The text is taken from the ratification by the King of Spain, in P. R. O., St. Pap. For., Treaties, no. 477.

² Here is inserted the full text of Doc. 55, in vol. II. of this series.

initus,³ sine prejuditio nihilominus contractus alicujus aliusve privilegii aut licentiae Reginae Magnae Britanniae ejusve subditis per Majestatem suam Catholicam concessis in tractatu pacis nuperrime concluso aut in contractu de Asiento, atque etiam absque prejuditio libertatis aut facultatis alicujus subditis Britannicis antea, sive competentis sive permissae sive indultae.

2. Subditi Regiarum suarum Majestatum in dominiis earundem alterutrinque mercaturam facientes non tenebuntur majora pro mercibus ab ipsis importatis exportandisve vectigalia aliave onera quaecunque solvere, quam quae a subditis amicissimae cujusvis gentis exigentur et solventur; ac si quae vectigalium diminutiones aliave beneficia exterae cuivis genti ab una alterave parti concedi in posterum contigerit, iisdem quoque utriusque coronae subditi reciproce et plenissime gaudebunt, et sicuti circa vectigalium rationes, uti supra, conventum, ita etiam pro regula generali inter Regias suas Majestates statutum est quod omnes et singuli ipsarum subditi in omnibus terris locisque hinc inde earundem imperio subjectis circa omnes impositiones aut vectigalia quaecunque, personas, merces, mercimonia, naves, naula, nautas, navigationem, et commercia concernentia iisdem ad minimum privilegiis, libertatibus, et immunitatibus utantur, fruuntur, parique favore in omnibus gaudeant, tam in curiis justitiae quam in iis omnibus quae sive commercia sive aliud jus quodcunque respiciunt quibus amicissima quaevis gens externa utitur, fruitur, gaudetque, aut in posterum uti, frui, aut gaudere possit, prout in articulo trigesimo octavo tractatus de anno millesimo sexcentesimo sexagesimo septimo in articulo praecedenti speciatim inserti fusius explicatur.

17. . . . Ratihabebitur praesens tractatus a Serenissimo Rege Catholico et Serenissima Magnae Britanniae Regina ejusdem ratihabitionis tabulae intra duos menses, aut citius si fieri posit, Trajecti ad Rhenum invicem commutabuntur.

In quorum fidem nos infrascripti, S. Regis Catholici et S. Magnae Britanniae Reginae legati extraordinarii et plenipotentarii, praesentes tabulas manus nostris descriptas sigillis nostris munivimus. Trajecti ad Rhenum die nono mensis Decembris anni a Christo nato millesimi septingentesimi decimi tertii.

El Duque de OSUNA. El Marques de MONTELEON. JOH: BRISTOL.

El qual tratado de comercio aqui escrito e inserto como arriba queda referido, despues de haverle visto y examinado maduramente, palabra por palabra, en mi consejo, he resuelto aprobarle y ratificarle, a excepcion de los tres articulos tercero, quinto, y octavo, que se han de entender y observar en la forma y expresiones que de nuevo se han puesto y expresan aqui, palabra por palabra, en los terminos siguientes.⁴

Por tanto, en virtud de la presente, yo, por mi, mis herederos y sucesores, como tambien por los vasallos, subditos, y habitantes en todos mis reynos y señorios, apruebo y ratifico todo lo expresado en el mencionado tratado de comercio, en lo que no contraviene a lo referido en los tres articulos, tercero, quinto, y octavo, los quales se han de entender, observar, y practicar como van ultimamente expresados en el cuerpo de esta ratificacion, y no como estan en el tratado; ratificando y aprobando todo lo demas de el en la mayor y mas amplia forma que puedo, y doy por bueno, firme, y valedero todo lo demas que en el se contiene, y prometo en fee y palabra de rey, y por todos mis

³ Doc. 65, in vol. II. of this series.

⁴ Here are inserted amended texts of arts. 3, 5, and 8, articles not here reproduced.

succesores y herederos, seguirle y cumplirle inviolablemente, segun su forma y tenor, mediante los tres articulos nuevamente formados, y mandar que se observen y cumplan de la misma manera como si yo le huviera tratado por mi propia persona, sin hacer ni dejar hacer en qualquier modo que sea, ni permitir que se haga cosa alguna en contrario, y que si se hiciese alguna contravencion de lo contenido en dicho tratado, considerados los tres articulos en esta ratificacion, como si estuvieran escritos e insertos en el tratado, la mandare reparar con effecto, sin dificultad ni dilacion, castigando y mandando castigar los delinquentes, obligando para el effecto de lo susodicho todos y cada uno de mis reynos y señorios y asimismo todos los otros mis bienes presentes y venideros, como tambien mis herederos y sucesores, sin exceptuar nada; i para firmeza de esta obligacion renuncio todas las leyes y costumbres y todas otras cosas contrarios a ello. En fee de lo qual mande despachar la presente, firmada de mi mano, sellada con mi sello secreto, y refrendada de mi infrascripto Secretario de Estado. Dada en Madrid a v'te y uno de Henero de mil setecentos y catorce.

YO EL REY.

MANUEL DE VADILLO Y VELASCO.

TRANSLATION.

Don Philip, by the grace of God king of Castile, Leon, Aragon, the Two Sicilies, Jerusalem, Navarre, Granada, Toledo, Valencia, Galicia, Majorca, Seville, Sardinia, Cordova, Corsica, Murcia, Jaen, the Algarves, Algeciras, Gilbraltar, the Canary Islands, the East and West Indies, and the islands and mainland of the Ocean, archduke of Austria, duke of Burgundy, of Brabant and Milan, count of Hapsburg, Flanders, Tyrol, and Barcelona, lord of Biscaya and of Molina, etc. Whereas there has been arranged, concluded, and signed, in the city of Utrecht, on the ninth of December of the year last past, 1713, by my extraordinary and plenipotentiary ambassadors and the Bishop of Bristol, ambassador extraordinary and plenipotentiary of the Most Serene Queen of Great Britain my very dear and very beloved sister and cousin, a treaty of commerce between the crowns of Spain and England, the tenor of which, in the Latin language, is as follows:

1. The treaty of peace, commerce, and alliance between the crowns of Spain and Great Britain, concluded at Madrid on the ^{twenty-third}/_{thirteenth} day of May in the year of Our Lord 1667, is ratified and confirmed, and it is agreed that the same, word for word, together with the royal schedules or ordinances annexed to it, shall for fuller confirmation and preservation, be here inserted, as follows.⁵

Their Royal Majesties do mutually promise that they will faithfully perform and fulfil all and every one of the articles of the foregoing treaty and all privileges, concessions, agreements, or other advantages whatsoever arising to the subjects on either side, which are contained in them or in the annexed schedules; and that they will at all times cause the same to be performed and fulfilled by their ministers, officers, and other subjects, so that the subjects on either side may enjoy the full effect of all and every one of them (those only excepted, concerning which some thing else has been established in the following articles, to the mutual satisfaction of each party), and of all those likewise which are contained in the following articles. Moreover

⁵ Here is inserted the full text of Doc. 55.

the treaty of 1670, made between the crowns of Spain and Great Britain, for preventing all differences respecting the restraining of depredations and establishing peace between the said crowns in America, is confirmed and ratified anew, without any prejudice however to any contract or other privilege or leave granted by his Catholick Majesty to the Queen of Great Britain or her subjects in the treaty of peace lately concluded, or in the contract of *Asiento*, as likewise without prejudice to any liberty or power, which the subjects of Great Britain enjoyed before, either through right, sufferance, or indulgence.

2. The subjects of their Royal Majesties, trading respectively in the dominions of each other, shall not be bound to pay greater duties or other charges whatsoever, for their imports or exports, than shall be exacted of and paid by the subjects of the most-favored nation; and if it shall happen in time to come that any diminutions of duties or other advantages shall be granted by either side to any foreign nation the subjects of each crown shall reciprocally and fully enjoy the same; and as it has been agreed, as is above-mentioned, concerning the rates of duties, so it is ordained as a general rule between their Royal Majesties that all and every one of their subjects shall, in all lands and places subject to the command of their respective Majesties, use and enjoy, at least the same privileges, liberties, and immunities, concerning all imposts or duties whatsoever, which relate to persons, wares, merchandise, ships, freights, mariners, navigation, and commerce, and enjoy equal favor in all things, as well in the courts of justice, as in all those things which relate to trade, or any other right whatsoever, as the most-favored foreign nation uses and enjoys, or may hereafter use and enjoy, as is explained more at large in the thirty-eighth article of the treaty of 1667, which is specially inserted in the foregoing article.

17. . . . The present treaty shall be ratified by the Most Serene Catholic King and the Most Serene Queen of Great Britain and the ratifications shall be exchanged, at Utrecht, within two months, or sooner if possible.

In witness whereof we the undersigned ambassadors extraordinary and plenipotentiaries of the Most Serene Catholic King and the Most Serene Queen of Great Britain have signed and sealed this present instrument at Utrecht, the ninth day of December, in the year of Our Lord 1713.

The Duke of OSUNA.

The Marquis of MONTELEON.

JOHN, bishop of BRISTOL.

Which treaty of commerce, here written and inserted as appears above, after having seen and examined it maturely, word for word, in my council, I have resolved to approve and ratify, with the exception of the three articles third, fifth, and eighth, which are to be understood and observed in the form and language which have been concerted and are here expressed, word for word, in the following terms.

Wherefore, in virtue of these presents, I, for myself, my heirs and successors, and as well for the vassals, subjects, and inhabitants of all my kingdoms and lordships, do approve and ratify all that is set forth in the said treaty of commerce, in so far as it does not contravene what has been provided in respect to the three articles third, fifth, and eighth, which are to be understood, observed, and executed as is finally stated in the body of this ratification, and not as they stand in the treaty; ratifying and approving all the rest of it in the largest and most ample form possible, and I declare all

the rest of it to be good, firm, and valid, and I promise on the faith and word of a king, and for all my successors and heirs, to observe and fulfill it inviolably, according to its form and tenor, including the three articles newly stated, and to command that all be observed and fulfilled in the same manner as if I had concerted it in my proper person, without doing, or leaving in any manner or permitting to be done, anything contrary to it, and if any contravention of what is contained in this treaty (the three articles inserted in this ratification being regarded as if they had been written and inserted in the treaty) shall take place, I will order it to be made good effectually, without making difficulty or delay, punishing and ordering to be punished those offending, and, by the effect of the above, placing under its obligations all and every one of my kingdoms and lordships and also all other my possessions, present and future, and my heirs and successors, nothing being excepted; and to confirm this obligation I renounce all laws and customs and all other things contrary to it. In testimony whereof I have ordered the present document to be issued, signed by my hand, sealed with my privy seal, and attested by my undersigned Secretary of State. Given at Madrid on the twenty-first of January in seventeen hundred and fourteen.

I THE KING.

MANUEL DE VADILLO Y VELASCO.

Treaty of peace and amity between Spain and the United Netherlands, concluded at Utrecht, June 26, 1714. Ratification by the States General, August 6, 1714. [Ratification by Spain, July 27, 1714.]

TEXT.¹

Les Estats Generaux des Provinces Unies des Païs Bas à tous ceux qui ces presentes lettres verrons, salut. Ayans vû et examiné le traité de paix, d'amitié, et de commerce, fait et conclu à Utrecht le vingt sixieme jour du mois de juin de la presente année mil sept cent quatorze, par le Sieur Don Francois Marie de Paula Tellez et Giron, duc d'Ossuna, comte de Uruena, marquis de Penafiel, grand d'Espagne de la premiere classe, grand chambellan du Roy Catholique, grand notaire dans les royaumes de Castille, commandeur de l'Ordre de Calatrava et grand commandeur aux clefs et dans l'Ordre de St. Jacques, un des grands assistans à la chambre du Roy Catholique, general dans ses armées, capitaine de la premiere compagnie de ses gardes du corps, et le Sieur Don Isidore Casado de Azevedo de Rosales, marquis de Monteleon, vicomte de Alcazar Real, senateur au conseil souverain des Indes de sa Majesté Catholique, un des gentilshommes de la chambre de sadite Majesté, ambassadeurs extraordinaires et plenipotentiaires de sa Majesté le Roy d'Espagne à l'assemblée d'Utrecht, et par les sieurs Jaques de Randwyk, seigneur de Rossem, etc., burggrave de l'Empire et juge de la ville de Nymegue, Guillaume Buys, conseiller pensionnaire de la ville d'Amsterdam, Bruno vander Dussen, bourguemaitre, senateur et conseiller pensionnaire de la ville de Goude, assesseur au conseil des heemrades de Schieland, dykgrave du Crimpenerwaard, Corneille van Gheel, seigneur de Spanbroek, Bulkenstein, etc., grand baillif du franc et de la ville de l'Ecluse, surintendant des fiefs relevans du bourg de Bruges du ressort de l'estat: Frederic Adrien baron de Rhecde, seigneur de Renswoude, d'Imminckhuysen et Moerkerken, etc., president de la noblesse dans les estatx de la province d'Utrecht, Sicco van Goslinga, grietman de Franequeradeel et curateur de l'université à Franequer, et Charles Ferdinand, comte de Inhuysen et de Kniphuisen, seigneur de Vredewolt, etc., deputez dans nostre assemblée de la part des estatx de Gueldre, de Hollande et Westfrise, de Zeelande, d'Utrecht, de Frise, et de Groningue et Ommelandes, nos ambassadeurs extraordinaires et plenipotentiaires à ladite assemblée d'Utrecht, en nostre nom et de nostre part, en vertu de leurs pleinpouvoirs respectifs, duquel traité la teneur s'ensuit.

Au nom et à la gloire de Dieu, soit notoire à tous, qu' après une longue et sanglante guerre, qui a affligé les peuples, sujets, royaumes, et païs de l'obeissance des seigneurs Roy des Espagnes et Estats Generaux des Provinces

¹ The French text here presented is taken from a photograph of the Dutch ratification in the Archivo Historico Nacional at Madrid, sect. Estado. Miss Davenport had also a photograph, from the Rijksarchief at the Hague, of the Spanish ratification. A Spanish text is printed in Cantillo, *Tratados, Convenios, y Declaraciones de Paz y de Comercio* (1843), pp. 154-162.

Unies des Païs Bas, eux, seigneurs Roy et Etats, touchés de compassion Chretienne, et desirans de mettre fin aux calamités publiques, d'arrêter les suites deplorables que la continuation ulterieure de ladite guerre pourroit causer, et de les changer en des effets agreables d'une bonne et sincere paix et en des fruits doux d'un entier et ferme repos, et desirans aussi de retablir, conserver, et augmenter la bonne intelligence qui avoit si longtems et si heureusement subsisté entre la couronne d'Espagne et l'état des Provinces Unies, et dont les sujets de part et d'autre par leur commerce et navigation ont tant profité; lesdits seigneurs Roy des Espagnes Don Philippe V^e. et Estats Generaux de Provinces Unies, pour parvenir à une si bonne fin et à un but tant desirable, ont commis et député pour leurs ambassadeurs extraordinaires et plenipotentiaires, savoir, ledit seigneur roy, Don Francois Marie de Paula Tellez et Giron, duc d'Ossuna, comte de Uruëna, marquis de Penafiel, grand d'Espagne de la premiere classe, grand chambellan du Roy Catholique, grand notaire dans les royaumes de Castille, commandeur de l'Ordre de Calatrave, et grand commandeur aux clefs et dans l'Ordre de St. Jaques, un des grands assistans à la chambre du Roy Catholique, general dans ses armées, capitaine de la premiere compagnie de ses gardes du corps, et Don Isidore Casado de Azevedo de Rosales, marquis de Monteleon, vicomte de Alcazar Real, senateur au conseil souverain des Indes de sa Majesté Catholique, un des gentilhommes de la chambre de sadite Majesté, et les dits seigneurs Estats Generaux les sieurs Jaques de Randwyk, seigneur de Rossem, etc., burggrave de l'Empire et juge de la ville de Nymegue, Guillaume Buys, conseiller pensionnaire de la ville d'Amsterdam, Bruno vander Dussen, bourguemaitre, senateur, et conseiller pensionnaire de la ville de Goude, assesseur au conseil des heemrades de Schieland, dykgrave du Crimpenerwaard, Corneille van Gheel, seigneur de Spanbroek, Bulkestein, etc., grand baillif du franc et de la ville de l'Ecluse, surintendant des fiefs relevans du bourg de Bruges du ressort de l'état, Fredrik Adrien, baron de Rheede, seigneur de Renswoude, d'Imminkhuysen et Moerkerken, etc., president de la noblesse dans les estats de la province d'Utrecht, Sicco van Goslinga, grietman de Franequeradeel, et curateur de l'université à Franequer, et Charles Ferdinandt, comte de Inhuysen et de Kniphuysen, seigneur de Vredewolt, etc., deputez dans leur assemblée de la part des etats de Gueldre, de Hollande et de West Frise, de Zeelande, d'Utrecht, de Frise, et de la ville de Groningue et Ommedelands: lesquels ambassadeurs extraordinaires et plenipotentiaires, munis respectivement des pleinpouvoirs dont les copies sont inserées de mot à mot a la fin du present traité, et assemblés en cette ville d'Utrecht, destinée aux negociations d'une paix generale, en vertu de leurs dits pleinpouvoirs, pour et au nom desdits seigneurs Roy et Etats, ont fait, conclu, et accordé les articles qui s'ensuivent.

1. Il y aura à l'avenir entre ledit seigneur Roy et les successeurs roys des Espagnes et ses royaumes, d'un part, et lesdits seigneurs Estats Generaux, de l'autre, une paix bonne, ferme, fidelle, et inviolable, et cesseront ensuite et seront delaissez, immediatement après la signature de ce traité, tous actes d'hostilité, de quelque nature qu'ils soient, entre lesdits seigneurs Roy et Estats Generaux, tant par mer et autres eaux que par terre, et tous leurs royaumes, païs, terres, et seigneuries, et pour tous leurs sujets et habitans de quelque qualité ou condition qu'ils soient, sans exception de lieux ou de personnes.

2. Il y aura un oubly et amnestie generale de tout ce qui a esté commis de part et d'autre à l'occasion de la derniere guerre, et ainsi tous les sujets desdits seigneurs Roy et Estats Generaux, de quelque qualité ou condition qu'ils

soient, sans nul excepter, pourront rentrer, rentreront, et seront effectivement laissez et retablis en la possession et jouissance paisible de tous leurs biens, honneurs, dignités, privileges, franchises, droits, exemptions, constitutions, et libertés, sans pouvoir estre recherchés, troublés, ni inquietés en general ni en particulier, pour quelque cause ou pretexte que ce soit, pour raison de ce qui s'est passé depuis la naissance de ladite guerre, et en consequence du present traité, et après qu'il aura esté ratifié, il leur sera permis à tous et à chacun en particulier, sans avoir besoin de lettres d'abolition et de pardon, de retourner en personne dans leurs maisons, en la jouissance de leurs terres et de tous leurs autres biens, ou d'en disposer de telle maniere que bon leur semblera.

5. Les sujets dudit seigneur Roy ne pourront prendre aucunes commissions pour des armemens particuliers ou lettres de repressailles des princes ou estats ennemis desdits seigneurs Estats Généraux, moins les troubler ni endommager en aucune maniere en vertu de telles commissions ou lettres de repressailles, ni aller en course avec elles, sous peine d'estre poursuivis et chatiez commes des pirates; ce qui sera pareillement observé par les sujets des Provinces Unies à l'égard des sujets dudit seigneur Roy, et seront à cette fin, toutes et quantes fois que cela sera requis de part et d'autre, dans les terres de l'obeissance desdits seigneurs Roy et Etats Generaux, publiées et renouvelées defenses tres-expresses et tres-precises de se servir en aucune maniere de telles commissions ou lettres de repressailles, sous la peine susmentionnée, qui sera executée severement contre les contrevenans, outre la restitution entiere, à laquelle ilz seront tenus envers ceux auxquels ils auront causé dommage.

6. Et pour obvier d'autant plus à tous inconveniens qui pourroient survenir par les prises faites par ignorance de cette paix, et principalement dans les lieux éloignez, il a esté convenu et accordé que si quelques prises se font de part ou d'autre dans la Mer Baltique, ou dans celle du Nord, depuis Ter Neuse en Norwegue jusques au bout de la Manche, après l'espace de douze jours, ou du bout de la dite Manche jusqu' au Cap de St. Vincent après l'espace de quatre semaines, et delà dans la Mer Méditerranée et jusqu' à la Ligne après l'espace de six semaines, et au dela de la Ligne et en tous les autres endroits du monde après l'espace de six mois, a compter respectivement du jour de la signature du present traité de paix, lesdites prises et les dommages qui se feroient après ces termes comme aussi les prises et les dommages qui se feroient dans lesdits termes par ceux qui auroient eu connoissance de la conclusion de cette paix seront portés en compte, et tout ce qui aura esté pris sera rendu avec compensation de tous les dommages qui en seront provenus.

7. Toutes lettres de marque et de repressailles qui pourroient avoir esté cy-devant accordé pour quelque cause que ce soit sont declarées nulles, et n'en pourront estre cy-après données par l'un des haut contractans, au prejudice des sujets de l'autre, si ce n'est seulement en cas de manifeste deny de justice, lequel ne pourra pas estre tenu pour verifié si la requeste de celui qui demande les repressailles n'est communiquée au ministre qui se trouvera sur les lieux de la part de l'estat contre les sujets duquel elles doivent estre données, afin que dans le terme de six mois, ou plustost s'il se peut, il puisse s'informer du contraire ou procurer l'accomplissement de justice qui sera dû.

9. La paix et la bonne amitié et correspondance etant ainsi retablie entre lesdits seigneurs Roy et Estats Generaux, comme aussi entre leurs sujets et

habitans reciproquement, et même ayans esté pourveu que rien de ce qui pourroit avoir entretenu ou causé quelque inimitié n'arrive, lesdits seigneurs Roy et Estats Generaux procureront et avanceront fidellement le bien et la prosperité l'un de l'autre, par tout support, aide, conseil et assistences, en toutes occasions et en tout tems, et ne consentiront à l'avenir à aucun traité ou negociations qui pourroient apporter du dommage à l'un ou à l'autre, mais les rompront, et donneront avis reciproquement avec soin et sincerité, aussitost qu'ilz en auront connoissance.

10. Le traité de Munster du trentieme janvier mil six cent quarante huit fait entre le feu Roy Philippe quatrieme et les Seigneurs Estats Generaux² servira de base au present traité, et aura lieu en tout, autant qu'il ne sera pas changé par les articles suivans, et pour autant qu'il est applicable. Et pour ce qui regarde les articles cinq et seize de ladite paix de Munster, ilz n'auront lieu qu'en ce qui concerne lesdites deux hautes puissances contractantes et leur sujets.

11. Les sujets et habitans des païs desdits seigneurs Roy et Estats auront toute bonne correspondance et amitié par ensemble, et pourront frequenter, séjourner, et demeurer ès païs l'un de l'autre, et y exercer leur traficq et commerce, tant par mer par autres eaux que par terre, le tout respectivement en toute seureté et liberté et sans aucune empeschment.

31. Sa Majesté Catholique promet de ne pas permettre qu'aucune nation estrangere, quelle qu'elle puisse estre et pour quelque raison ou sous quelque praetexte que ce soit, envoie vaisseau ou vaisseaux ou aille commercier dans les Indes Espagnoles, mais au contraire sa Majesté s'engage de retablir et de maintenir après la navigation et le commerce dans ces Indes de la maniere que tout cela estoit pendant le regne du feu Roy Charles Second et conformément aux loix fondamentales d'Espagne, qui defendent absolument à toutes les nations etrangeres l'entrée et le commerce dans ces Indes, et reservent l'un et l'autre uniquement aux Espagnolz, sujets de sadite Majesté Catholique. Et pour l'accomplissement de cet article les seigneurs Estats Generaux promettent aussi d'aider sa Majesté Catholique, bien entendu, que cette regle ne donnera pas praejudice au contenu du contract de l'Assiento des Negres, fait en dernier lieu avec sa Majesté la Reine de la Grande Bretagne.

33. Et pour rendre le commerce et la navigation, de part et d'autre, encore plus libre et seure, on est convenu de confirmer le traité de marine fait à la Haye le dix septieme Decembre mille six cent cinquante entre le feu Roy Philippe quatre et les Seigneurs Estats Generaux,³ et que ce Traité sera observé et executé en tout, comme s'il estoit inseré icy, de mot à mot, excepté que la defense comprise dans l'article trois et quatre de ce traité n'aura aucun lieu.

34. Quoy qu'il soit dit dans plusieurs des articles precedens que les sujets, de part et d'autre, pourront librement aller, frequenter, demeurer, naviger, et trafiquer dans les païs, terres, villes, ports, places, et rivières de l'un et de l'autre des hauts contractants, on entend neanmoins que lesdits sujets ne jouiront de cette liberté que dans les etatz de l'un et de l'autre en Europe, puisque l'on est expressement convenu, que pour ce qui regarde les Indes Espagnoles la navigation et le commerce ne s'y feront que conformément à l'article trente et un de ce traité et que dans les Indes, tant Orientales

² Doc. 40, in vol. I. of this series.

³ Dumont, *Corps Diplomatique*, VI. 570-572.

qu' Occidentales, qui sont sous la domination des seigneurs Estats Generaux, la navigation et le commerce se feront comme ilz s'y sont faits jusques à present, et que pour ce qui regarde les Iles Canaries, la navigation et le commerce des sujets des seigneurs Estats s'y feront de la même maniere que sous le regne du feu Roy Charles Second.

37. Puisque l'heureuse continuation de paix aussi bien que le repos et la seureté de l'Europe dependent, entre autres, principalement aussi de ce que les deux couronnes d'Espagne et de France demeurent toujours independantes l'un de l'autre, et qu'elles ne puissent jamais estre unies sur la teste d'un mesme roy, et que sa Majesté Catholique, à cette fin, et du consentement du Roy Tres Chrétien, a renoncé le cinquieme Novembre de l'année mil sept cent douze pour elle mesme, ses heritiers et successeurs à perpetuité, et dans les termes les plus forts, à tout droit, titre, et pretension, quelle qu'elle puisse estre, à la couronne de France, et que, de l'autre costé, les princes de la maison royale de France ont aussi renoncé pour eux mesmes, leurs heritiers et successeurs, à perpetuité et dans les termes les plus forts, à tout droit, titre, ou pretension, quelle qu'elle puisse estre, à la couronne d'Espagne, et puisque ces renonciations et les declarations, qui s'en sont ensuivies en Espagne et en France, sont aussi devenues des loix fondamentales et inviolables de l'un et de l'autre royaume; sa Majesté Catholique confirme encore par ce traité, de la maniere la plus fort, sadite renonciation à la couronne de France, et elle promet et s'engage, tant pour elle mesme que pour ses heritiers et successeurs, d'accomplir religieusement, et de faire accomplir cette renonciation, sans permettre ni souffrir que directement ni indirectement on en vienne contre, soit en tout soit en partie, comme aussi d'employer tout son pouvoir à ce que les dites renonciations des princes de la maison royale de France sortent leur plein et entier effect, et qu'ainsi les deux couronnes d'Espagne et de France demeurent toujours tellement séparées l'une de l'autre qu'elles ne puissent jamais estre unies.

38. En ce present traité de paix et d'alliance seront compris tous roys, princes, et estats qui seront nommés d'un commun et reciproque consentement et satisfaction de part et d'autre dans un tems convenable.

39. Et pour plus grande seureté de ce traité et de tous les points et articles y contenus, sera le dit traité publié, verifié, et enregistré, de part et d'autre, dans les conseils, cours, et autres places où l'on a accoutumé de faire les publications, verifications, et enregistremens.

40. Sera le present traité ratifié et approuvé par les dits seigneurs Roy et Estats Generaux, et les lettres de ratification seront eschangées, dans le terme de six semaines, ou plustost si faire se peut, a compter du jour de la signature.

En foy de quoy, nous ambassadeurs extraordinaires et plenipotentiaires de sadite Majesté et des seigneurs Estats Generaux, en vertu de nos pouvoirs respectifs avons, ès dits noms, signé ces presentes de nos seings ordinaires et à icelles fait apposer les cachets de nos armes, à Utrecht ce vingt sixieme Juin l'an mil sept cent quatorze.

F. M. Ducq de OSSUNA.
El Marque de MONTELEON

B. v. DUSSEN.
C. v. GHEEL VAN SPANBROEK.
F. A. Baron de REEDE DE
RENSWOUDE.
Graaf van KNIPHUISEN.

Et d'autant que le contenu dudit traité porte que les lettres de ratification seront eschangées dans le terme de six semaines, ou plustôt si faire se peut,

a compter du jour de la signature, nous, voulant bien donner des marques de notre sincérité, et nous acquiter de la parole que nos ambassadeurs ont donnée pour nous, nous avons agréé, aprouvé, et ratifié ledit traité, et un chacun des articles d'iceluy, cy-dessus transcrits, comme nous l'agréons, aprouvons, et ratifions par ces presentes, promettans en bonne foy et sincerement de le garder, entretenir, et observer inviolablement, de point en point, selon sa forme et teneur, sans jamais aller ni venir au contraire, directement ni indirectement, en quelque sorte ou maniere que ce soit. En foy de quoy nous avons fait signer ces presentes par le president de nostre assemblée, contre-signer par nostre greffier, et y apposer nostre grand seau. Fait à la Haye le sixieme d'Août mil sept cent quatorze.

C. V. GHEEL VAN SPANBROECK.

Par ordonnance de susdits

Seigneurs Estats Generaux.

FAGEL.

Treaty between Portugal and Spain, concluded at Utrecht, February 6, 1715. Ratification by Portugal, March 9, 1715.

TEXT.¹

Dom João, por graça de Deos rey de Portugal e dos Algarves daquem e dalem Mar em Africa, senhor de Guine e da conquista, navegação, comercio de Ethiopia, Arabia, Percia, e da India, etca. Faço saber aos que esta minha carta patente de approvação, ratificação, e confirmação virem, que aos seis dias do mes de Fevereiro do anno presente de mil sete centos e quinze, na cidade de Utrecht, se ajustou e concluyo hum tratado de pax perpetua e amizade entre mim e o Muito Alto e Muito Poderozo principe Felippe 5º, rey Catt'o de Hespanha, meu bom irmão e primo, por João Gomes da Silva, conde de Tarouca, senhor das villas de Tarouca, Lalim, Lazarim, Penalva, Gulfar, e suas dependencias, comendador de Villa Cova, do meu conselho, e mestre de campo general dos meos exercitos, e D. Luis da Cunha, do meu conselho, e comendador da comenda de Sanctae Maria de Almendra, ambos meos embaixadores extraordinarios e plenipotenciarios no congresso que se formou para a pax geral na ditta cidade, e Dom Francisco Maria de Paula Teles, Giron, Benavides, Carilho, e Toledo, Ponce de Leon, duque de Ossuna, conde de Urenha, marques de Penhafiel, grande de Hespanha da primeira classe, camareiro e copeiro mor de s. Mage. Catt'a, notario mayor dos reynos de Castella, claveiro mayor na ordem e cavalleria de Calatrava, comendador della, e de Usagre na de Sanctiago, general dos exercitos da mesma Mage., gentilhomen de sua camara, e capitão da primeira companhia Hespanhola das suas guardas de corpo, outro sy seu embaixador extraordinario e plenipotenciario, os quaes forão deputados para o ajustamento e concluzão do d'o tratado, em virtude dos plenos poderes que para isso tiverão, do qual tratado o theor e o seguinte.

Em nome da Santissima Trindade.

Saibão todos os presentes e futuros, que achandosse a mayor parte da Christandade afflicta com hua larga e sanguinolenta guerra, foy Deos servido inclinar os annimos do Muito Alto e Muito Poderozo principe Dom João o 5º, pella graça de Deos rey de Portugal, e do Muito Alto e Muito Poderozo principe Dom Felippe 5º, pella graça de Deos rey Catt'o. de Hespanha, á hum sincero e ardente desejo de contribuir para o suceo universal, e de segurar o descanso dos seos vassallos, renovando e estabalecendo a pax e boa correspondencia que havia deantes entre as duas coroas de Portugal e de Hespanha. Para cujo effeito derão as dittas Mag'es plenos poderes aos seos embaixadores extraordinarios e plenipotenciarios: á saber sua Mag'e Portugueza ao ex'mo s'nor João Gomes da Silva, conde de Tarouca, senhor das villas de Tarouca, de Lalim, Lazarim, Penalva, Gulfar, e suas dependencias, comendador de Villa Cova, do cons'º de s. Mag'e e mestre de campo general dos seos exercitos, e ao ex'mo s'nor D. Luis da Cunha, comendador de Santa

¹ The text is taken from the ratification by the King of Portugal, in the Spanish archives.

Maria de Almendra, e do conselho de s. Mag'e, e sua Mag'de Catt'a ao ex'mo s'nor D. Francisco Maria de Paula Teles, Giron, Benavides, Carilho, e Toledo, Ponce de Leon, duque de Ossuna, conde de Urenha, marques de Penhafiel, grande de Hespanha da primeira classe, camareiro e copeiro mor de s. Mag'e Catt'a, notario mayor dos reynos de Castella, claveiro mayor na ordem e cavalleria de Calatrava, comendador della, e de Usagre na de Sanctiago, general dos reaes exercitos de s. Mag'de, gentil-homem de sua camara, e capitão da prim'ra companhia Hespanhola de suas reaes guardas do corpo; os quaes concorrendo na cidade de Utrecht, lugar destinado para o congreço, e examinando reciprocamente os plenos poderez, de que se ajuntará copia no fim deste tratado, depois de implorarem a assistencia Divina convierão nos artigos seguintes.

1. Haverá hua pax solida e perpetua, com verdadeira e sincera amizade, entre sua Mag'de Portugueza, seos dessendentes, sucessores, e herdeiros, todos os seos estados e vassallos, de hua parte, e sua Mag'e Catt'a, seos dessendentes, sucessores, e herdeiros, todos os seos estados e vassallos, de outre parte; a qual pax se observará firme e inviolavelmente, assim por terra como por mar, sem permittir que por hua ó outra nassão se cometta alguma hostilidade em qualquer lugar e por qualquer pretexto que for; e sucedendo, contra toda a esperança, que se contravenha em alguma couza ao presente tratado, elle ficará sempre em seu vigor, e a ditta contravenção se reparará de boa fé sem dilacão nem difficuldade, castigando severamente os aggregores, e rependosse tudo no primeiro estado.

2. Em consequencia desta pax ficarão em inteiro esquecimento todas as hostilidades que se cometarão athe o presente, de sorte que nenhum dos vassallos das duas coroas tenha direito para requerer a satisfação dos damnos padecidos, ou por via de justiça, ou por outro qualquer caminho, nem possam alegar reciprocamente as perdas que experimentarão na presente guerra, esquecendosse de tudo o passado, como se não tivera havido alguma interrupção na amizade, que agora se restabelece.

13. Para mayor firmeza e validade do presente tratado se confirma de novo o outro que se fez entre as duas coroas em treze de Fevereiro de mil seis centos sessenta e oito,² o qual fica valido em tudo aquillo que se não derogar no tratado presente; e especialmente se confirma o artigo outavo do referido tratado de treze de Fevereiro de mil seis centos sessenta e oito, como se estivesse aqui incluído neste tratado, palavra por palavra, offerecendo reciprocamente s. Mag'e Portugueza e s. Mag'e Catt'a mandar fazer prompta e inteira justiça as partes intereçadas.

14. Da mesma sorte se confirmão e comprehendem no presente tratado os quatorze artigos contheudos no tratado da transacção feito entre as duas coroas em dezoito de Junho de mil sete centos e hum,³ os quaes todos ficarão em sua força e vigor, como se aqui fossem escritos palavra por palavra.

15. Em virtude de tudo o estipulado na sobre ditta transacção sobre o assento para a introdução dos negros, s. Mag'e Catt'a deve aos intereçados no ditto assento a soma de duzentas mil patacas de antecipação, que os intereçados imprestarão a s. Mag'e Catt'a com os redditos de outo por cento, desde o dia do imprestimo athe o seu inteiro pagamento, o que fas a quantia de duzentas e noventa e seis mil patacas, contando desde sete de Julho de mil seis centos noventa e seis athe seis de Janeiro de mil sete centos e quinze. Como tambem a soma de trezentos mil cruzados (moeda Portugueza) que fazem cento e

² Doc. 60, in vol. II. of this series.

³ Doc. 88.

sessenta mil patacas. Estas tres somas ficão reduzidas pello presente tratado somente a soma de seis centas mil patacas, que s. Mag'e Catt'a promete pagar em tres pagamentos iguaes e consecutivos, cada hum de duzentas mil patacas. O primeiro pagamento se fara com a chegada á Hespanha da primeira frota, flotilha, ou galiões, que vierem depois da troca das ratificações do presente tratado; e este primeiro pagamento será por conta dos redditos devidos pello capital das duzentas mil patacas da antecipação. O segundo pagamento se fará com a chegada da segunda frota, flotilha, ou galiões, e será o capital das duzentas mil patacas de antecipação. E o terceiro pagamento farsseha com a chegada da terceira frota, flotilha, ou galeões que será de trezentos mil cruzados, reduzidos á cento e sessenta mil patacas, e de quarenta mil patacas do resto dos redditos. As somas necessarias para estes tres pagamentos se poderão levar para Portugal em dinheiro ou em barras de ouro ou prata. Em virtude disto, a soma das duzentas mil patacas da antecipação não vencerá juros depois do dia da a signatura do presente tratado; porem se sua Mag'e Catt'a não pagar a ditta soma com a chegada da segunda frota, flotilha, ou galeões, correrão os juros das duzentas mil patacas da antecipação á outo por cento desde a chegada da segunda frota, flotilha, ou galeões athe o inteiro pagamento da ditta soma.

16. Sua Mag'e Portugueza cede pelo presente tratado, e promete fazer ceder á s. Mag'e Catt'a, todas as somas devidas por s. Mag'e Catt'a em Indias de Hespanha á Companhia Portugueza do assento da introdução dos negros, excepto as seis centas mil patacas de que se fas menção no artigo quinze deste tratado. Cede tambem s. Mag'e Portugueza á s. Mag'e Catt'a aquillo que os dittos intereçados poderião pertender da herança de D. Bernardo Francisco Marin.

17. Abrirseha geralmente o comercio entre os vassallos de ambas as Magestades, com a mesma liberdade e segurança que havia antes da presente guerra; e em demonstração da sincera amizade que se dezya não so restabelecer, mas ainda acrescetar entre os vassallos das duas coroas, concede s. Mag'e Portugueza á nação Hespanhola, e s. Mag'e Catt'a á nação Portugueza, todas as ventagens no comercio, e todos os privilegios, liberdades, e izenções que athe aqui tiver dado, ou pello tempo adiante conceder á nação mais favorecida e mais privilegiada das que tem comercio nos dominios de Portugal e de Hespanha, entendendose isto só nos dominios de Europa, por estar unicamente rezervada a navegação e comercio da Indias ás duaz sós nações nos seus dominios respectivos da America, exceptuando o que ultimamente se tem estipulado no contrato do assento dos negros feito entre s. Mag'e Catt'a e s. Mag'e Britannica.

22. E porque a Raynha da Grande Bertanha, de glorioza memoria, tinha oferecido ser garante da inteira execução deste tratado, e da sua firmeza e duração, suas Mag'es Portugueza e Catt'a accitão a sobre ditta garantia em toda a sua força e vigor, para todos os presentes artigos em geral, e cada hum em particular.

24. Todos os artigos asima escritos forão tratados, acordados, e estipulados entre os sobre dittos embaixadores extraordinarios e plenipotenciarios dos senhores Reys de Portugal e de Hespanha, em nome de s. Mag'es, e promettem, em virtude dos seos plenos poderes, que os dittos em geral, e cada hum em particular, serão observados, cumpridos, e executados inviolavelmente pellos senhores reys seos amos.

25. As rateificações do presente tratado, dadas em boa e devida forma, se trocarão de ambas as partes dentro do termo de sincoenta dias contados do dia da a signatura, ou mais sedo se for possivel.

Em fé do que, e em virtude das ordens e plenos poderes que nos abaixo assignados recebemos de nossos amos el Rey de Portugal e el Rey Catt'a de Hespanha, assignamos o prezente tratado, e lhe fizemos por o sello de nossas armas. Feito em Utrecht á seis de Fevereiro do anno de mil setecentos e quinze.

Conde de TAROUCA.

El Duque de OSSUNA.

D. LUIS DA CUNHA.

E sendo visto por mim o ditto tratado, depois de bem considerado e examinado, approvo, ratefico, e confirmo tudo nelle contheudo, e cada ponto em particular, e pella prezente o dou por bom, firme, e valiozo, prometendo em fé e palavra real seguir e cumprir inviolavelmente sua forma e theor, e fazello seguir, observar, e cumprir, sem fazer nem permitir se faça couza alguma em contrario, directa ou indirectamente, em qualquer modo que ser possa, renunciando todas as leys, costumes, e todas as outras couzas que hajão em contrario. E para fé e firmeza de tudo, mandey passar a prezente carta de approvação, rateficação, e confirmação, por mim assignada, e sellada com o sello grande de minhas armas. Dada na cidade de Lisboa aos nove dias do mes de Março. ANTONIO PINTO COELHO a fez. Anno do nassimento de Nosso Senhor Jezus Christo de mil sete centos e quinze. DIOGO DE MENDOÇA CORTE REAL subscrivi.

EL REY.

TRANSLATION.

I, Dom John, by the grace of God king of Portugal and of the Algarves on this side the sea and beyond the sea in Africa, lord of Guinea and of the conquest, navigation, and commerce of Ethiopia, Arabia, Persia, and India, etc., make known to all who shall see this my letter patent of approbation, ratification, and confirmation, that on the sixth day of the month of February in the present year of one thousand seven hundred and fifteen, in the city of Utrecht, a treaty of perpetual peace and friendship was agreed upon and concluded between me and the Most Exalted and Most Potent prince Philip the Fifth, Catholic King of Spain, my good brother and cousin, by João Gomes da Silva, count of Tarouca, lord of the towns of Tarouca, Lalim, Lazarim, Penalva, Gulfar, and their dependencies, commander of Villa Cova, member of my council and colonel-general of my armies, and Dom Luis da Cunha, member of my council and commander of Santa Maria de Almendra, both of these being my ambassadors extraordinary and plenipotentiary in the congress assembled in that city for the general pacification, and Don Francisco Maria de Paula Telles, Giron, Benavides, Carillo, and Toledo, Ponce de Leon, duke of Ossuna, count of Ureña, marquis of Peñafiel, grandee of Spain of the first class, chamberlain and chief butler to his Catholic Majesty, chief notary of the kingdoms of Castile, chief key-bearer in the Order and Knight-hood of Calatrava, commander therein and of Usagre in the Order of Santiago, general in the armies of his said Majesty, gentleman of his bedchamber, and captain of the first Spanish company of his body-guards, also his ambassador extraordinary and plenipotentiary, who were deputed for the concerting and concluding of the said treaty by virtue of the full powers which they had for that purpose, of which treaty the tenor is the following:

In the name of the Most Holy Trinity.

Know all men present and future, that, the greater part of Christendom having found itself afflicted with a great and sanguinary war, God has been pleased to incline the minds of the Most Exalted and Most Potent prince Dom John the Fifth, by the grace of God king of Portugal, and of the Most Exalted and Most Potent prince Don Philip the Fifth, by the grace of God Catholic king of Spain, to a sincere and ardent desire to contribute to the universal tranquillity and to secure the repose of their subjects, renewing and establishing the peace and good relations which before existed between the two crowns of Portugal and of Spain. For which purpose the said Majesties gave full powers to their ambassadors extraordinary and plenipotentiary, to wit, his Portuguese Majesty to the most excellent lord João Gomes da Silva, count of Tarouca, lord of the towns of Tarouca, Lalin, Lazarim, Penalva, Gufar, and their dependencies, commander of Villa Cova, a member of his Majesty's council and colonel-general of his armies, and to the most excellent lord Dom Luis da Cunha, commander of Santa Maria de Almendra, and a member of his Majesty's council, and his Catholic Majesty to the most excellent lord Don Francisco Maria de Paula Telles, Giron, Benavides, Carillo, and Toledo, Ponce de Leon, duke of Osuna, count of Ureña, marquis of Peñafiel, grandee of Spain of the first class, chamberlain and chief butler to his Majesty, chief notary of the kingdoms of Castile, chief key-bearer in the Order and Knighthood of Calatrava, commander therein and of Usagre in the Order of Santiago, general of the royal armies of his Majesty, gentleman of his bedchamber, and captain of the first Spanish company of his body-guard; who, having come together in the city of Utrecht, the place designated for the congress, and having reciprocally examined the full powers, of which copies will be annexed at the end of this treaty, have after imploring the divine assistance agreed to the following articles.

1. There shall be a firm and perpetual peace, with true and sincere friendship, between his Portuguese Majesty, his descendants, successors, and heirs, and all his states and subjects, on the one part, and his Catholic Majesty, his descendants, successors, and heirs, and all his states and subjects, on the other part; which peace shall be observed firmly and inviolably, both on land and on sea, without permitting that any hostility shall be committed by either nation in any place or under any pretext whatsoever; and if it shall happen, contrary to all hope, that the present treaty shall be contravened in any particular, it shall remain always in force, and the said contravention shall be repaired in good faith, without delay or difficulty, the aggressors being severely punished and everything restored to its first estate.

2. In consequence of this peace, all acts of hostility which have been committed up to the present time shall remain entirely forgiven, in such manner that no one of the subjects of the two crowns shall have a right to require, either by way of justice or by any other method, satisfaction for damages suffered, nor shall they be able to put forward reciprocally the losses which they have undergone in the present war, the past being entirely forgiven, as if there never had been any interruption to the friendship which is now re-established.

13. To give greater security and validity to the present treaty, that which was made between the two crowns on the thirteenth of February, one thousand six hundred and sixty-eight, is confirmed and remains valid in all things not contrary to the present treaty; and especially is confirmed the eighth article

of the said treaty of the thirteenth of February, one thousand six hundred and sixty-eight, as if it had been here included in this treaty, word for word, his Portuguese Majesty and his Catholic Majesty offering reciprocally to command that prompt and complete justice be done to the interested parties.

14. Likewise are confirmed, and comprehended in the present treaty, the fourteen articles contained in the treaty of commercial adjustment concluded between the two crowns on the eighteenth of June, one thousand seven hundred and one, all of which remain in force and valid as if they were here written word for word.

15. In virtue of all that has been stipulated in the above-mentioned commercial adjustment concerning the *assiento* for the introduction of negroes, his Catholic Majesty owes to those who are interested in the said *assiento* the sum of two hundred thousand patacas (dollars), which those interested shall lend to his Catholic Majesty at interest of eight per cent., reckoned from the day of the loan to its complete payment, which makes the amount of two hundred and ninety-six thousand patacas, counting from the seventh of July of one thousand six hundred and ninety-six to the sixth of January of one thousand seven hundred and fifteen. Also (is owing) the sum of three hundred thousand cruzados, Portuguese money, which make one hundred and seventy thousand patacas. These three sums are reduced by the present treaty to the sum of only six hundred thousand patacas, which his Catholic Majesty promises to pay in three equal and consecutive payments of two hundred thousand patacas each. The first payment shall be made on the arrival in Spain of the first fleet, *flotilla*, or galleons which shall come after the exchange of the ratifications of the present treaty; and this first payment shall be on account of the interest due upon the capital sum of the two hundred thousand patacas advanced. The second payment shall be made on the arrival of the second fleet, *flotilla*, or galleons, and shall be the capital sum of the two hundred thousand patacas advanced. And the third payment shall be made on the arrival of the third fleet, *flotilla*, or galleons, and shall consist of three hundred thousand cruzados, reduced to one hundred and seventy thousand patacas, and of forty thousand patacas of remaining interest. The sums necessary for these three payments may be made over to Portugal in money or in bars of gold or silver. In virtue of this, the sum of two hundred thousand patacas advanced shall not bear interest from the day of the signature of the present treaty; but if his Catholic Majesty shall not pay the sum above mentioned on the arrival of the second fleet, *flotilla*, or galleons, interest at eight per cent. on the two hundred thousand patacas advanced shall run from the arrival of the second fleet, *flotilla*, or galleons until the complete payment of the said sum.

16. His Portuguese Majesty, by the present treaty, renounces and promises to cause to be renounced to his Catholic Majesty all the sums due from his Catholic Majesty in the Spanish Indies to the Portuguese Company of the *assiento* for the introduction of negroes, except the six hundred thousand patacas mentioned in article fifteen of the present treaty. Also his Portuguese Majesty concedes to his Catholic Majesty whatever those interested as above mentioned may claim from the inheritance of Don Bernardo Francisco Marin.

17. Commerce shall be thrown open generally between the subjects of their two Majesties, with the same freedom and security that it had before the present war; and in demonstration of the sincere friendship which it is desired not only to re-establish but to increase between the subjects of the two crowns, his Portuguese Majesty grants to the Spanish nation, and his Catholic Majesty

to the Portuguese nation, all the advantages in commerce, and all the privileges, freedoms, and exemptions which have heretofore been given or may hereafter be granted to the most-favored and most privileged nation of those that have commerce in the dominions of Portugal and of Spain, this being understood solely of the dominions in Europe, the navigation and commerce of the Indies being reserved solely to the two nations in their respective dominions in America, with the exception of what has lately been stipulated in the contract of the Assiento de Negros concluded between his Catholic Majesty and his Britannic Majesty.

22. And whereas the Queen of Great Britain, of glorious memory, offered to be guarantor of the complete execution of this treaty, and of its firmness and duration, their Portuguese and Catholic Majesties accept the aforesaid guarantee in all its force and strength, for all the present articles in general and each one in particular.

24. All the articles thus written have been treated, agreed upon, and stipulated between the above-named ambassadors extraordinary and plenipotentiary of the lords kings of Portugal and Spain in the name of their Majesties, and they promise, in virtue of their full powers, that the said articles in general, and every one of them in particular, shall be observed, fulfilled, and executed inviolably by the lords kings their masters.

25. The ratifications of the present treaty, given in good and due form, shall be exchanged by the two parties within the term of fifty days reckoned from the day of the signature, or sooner if it may be.

In faith whereof, and in virtue of the orders and full powers which we the undersigned have received from our masters the King of Portugal and the Catholic King of Spain, we have signed the present treaty and confirmed it with the seal of our arms. Done at Utrecht on the sixth of February of the year one thousand seven hundred and fifteen.

The Count of TAROUCA.
Dom LUIS DA CUNHA.

The Duke of OSSUNA.

And the said treaty having been seen by me, I, after having well considered and examined it, do approve, ratify, and confirm all that is contained therein, and every point in particular, and by these presents declare it good, firm, and valid, promising on my royal faith and word to follow and fulfill inviolably its form and tenor, and to cause it to be followed, observed, and fulfilled, without doing or permitting to be done anything contrary thereto, directly or indirectly, in any manner whatsoever, renouncing all laws, customs, or any other things that may be contrary thereto. And in testimony and confirmation of all, I have ordered to be issued the present letter of approbation, ratification, and confirmation, signed by me and sealed with the great seal of my arms. Given in the city of Lisbon, on the ninth day of the month of March, in the year of Our Lord Jesus Christ one thousand seven hundred and fifteen. Written by ANTONIO PINTO COELHO. Subscribed by DIOGO DE MENDOÇA CORTE REAL.

THE KING.

Treaty of commerce between Great Britain and Spain, concluded at Madrid, December 3/14, 1715. Ratification by Spain, January 13/24, 1716. [Ratification by Great Britain, December 12/23, 1715.]

TEXT.¹

Don Phelipe, por la gracia de Dios rey de Castilla, de Leon, de Aragon, de los dos Sicilias, de Hierusalem, de Navarra, de Granada, de Toledo, de Valencia, de Galicia, de Mallorca, de Sevilla, de Cerdeña, de Cordova, de Corsega, de Murcia, de Jaen, de los Algarves, de Algecira, de Gibraltar, de las islas de Canaria, de las Indias Orientales y Occidentales, islas y tierra firme del Mar Oceano, archiduque de Austria, duque de Borgoña, de Bravante y Milan, conde de Abspurg, de Flandes, Tirol y Barcelona, señor de Vizcaya y de Molina, etc. Por quanto aviendose ajustado y firmado en Madrid en catorce de Diziembre del año pasado de mil setecientos y quince, por el Marques de Bedmar y Don Jorge Bubb, en virtud de los poderes necesarios que para ello se les dieron por mi y por el Serenisimo Rey de la Gran Bretaña, mi muy charo y mui amado hermano y primo, un tratado de declaracion y esplicacion sobre algunos de los articulos de los antecedentes, ajustados en Utreck el año de mil setecientos y trece, entre esta corona y la de Inglaterra, sobre la paz y comercio, cuyo tenor de dicho nuevo tratado es como se sigue en idioma castellano :

Haviendo aun quedado despues de los tratados de paz y comercio ultimamente concluido en Utreck en trece de Jullio y en nueve de Diciembre de mil setecientos y trece ² entre su Mag'd Catholica y la difunta Reyna de la Gran Bretaña de gloriosa memoria algunas pequeñas diferencias tocantes al comercio y curso de el, y hallandose sus Magestades Catholica y Britanica inclinados a mantener y cultivar una firme y imbiolable paz y amistad, han hecho para lograr este saludable fin concluir y firmar, por los dos ministros reciprocamente y en la debida forma a este fin calificados, los articulos siguientes.

1. Los basalllos Britanicos no estaran obligados a pagar mayores u otros derechos sobre las mercaderias, que hacen entrar y salir de diferentes puertos de su Mag'd Catholica, que los que pagavan de las mismas mercaderias en tiempo del Rey Carlos Segundo, reglados por cedulas y ordenanzas del referido rey o sus predecesores, y aunque el pié del fardo no este fundado en ninguna ordenanza real, no obstante su Mag'd Catholica declara, quiere, y ordena que se observe al presente y en lo venidero como una ley imbiolable; los quales derechos se exigiran y sacaran, al presente y en lo venidero, con las mismas ventajas y favores de los referidos vasallos.

¹ The text is taken from the ratification by the King of Spain, P. R. O., St. Pap. For., Treaties, no. 478.

² Docs. 102 and 104.

3. Su Magestad Catholica permite a los referidos vasallos recoger y tomar sal en la isla de Tortudos, aviendo gozado de esta licencia en tiempo del Rey Carlos Segundo, sin interrupcion alguna.

5. Gozaran los dichos vasallos de todos los derechos, privilegios, franquezas, exempciones, y inmunidades, qualesquiera que sean, de que gozaron antes de la ultima guerra, en virtud de cédulas reales u ordenanzas, y por los articulos del tratado de paz y comercio hecho en Madrid en el año de mil seiscientos y sesenta y siete,³ el qual se confirma plenamente aqui; y los dichos vasallos seran tratados en España de la misma forma que la nacion mas favorecida, y por consecuencia pagaran todas las naciones los mismos derechos sobre las lanas y otras mercaderias que entraren o sacaren por tierra de estos reynos que pagaren los dichos vasallos sobre las mismas mercaderias que entraren o sacaren por mar, y todos los derechos, privilegios, franquezas, exempciones, e inmunidades que se concedieren o permitieren a qualquiera otra nacion se concederan y permitiran a los referidos vasallos, y lo mismo se concedera, observara, y permitira a los vasallos de España en los reynos de su Mag'd Britanica; [6.]⁴ y pudiendo aver auido innovaciones en el comercio. promete su Mag'd Catholica aplicar de su parte todo el cuidado posible para abolirlas y hacerlas evitar por todos medios en lo venidero; y igualmente su Mag'd Britanica promete aplicar todo el cuidado posible para abolir de su parte todas innovaciones, y evitarlas en lo venidero por todos medios.

[7.]⁴ El tratado de comercio hecho en Utrech en nueve de Diziembre de mil setecientos y trece⁵ quedara en su fuerza, a la reserva de los articulos que se hallaren contrarios a lo que se ha concluido y firmado oy, los quales seran abolidos y de ninguna fuerza, y sobre todo, los tres articulos llamados comunmente explanatorios, y el presente sera aprovado, ratificado, y trocado, de una y otra parte, en el termino de seis semanas, o antes si fuere posible.

En cuya fee, y en virtud de nuestros plenos poderes, firmamos el presente en Madrid a catorce de Diviembre de mil setecientos y quince.

El Marques de BEDMAR.

GEORGE BUBB.

Por tanto, aviendose visto y examinado el referido nuevo tratado, he venido en aprobarle y ratificarle, como en virtud de la presente le apruebo y ratifico en la mejor y mas amplia forma que puedo, prometiendo en fee de mi palabra real cumplirle enteramente como en el se contiene y expresa; para lo qual mande despachar presente, firmada de mi mano, sellada con mi sello secreto, y refrendada de mi infraescrito Secretario de Estado. Dada en Madrid a veinte y quatro de Enero de mil setecientos y diez y seis.

YO EL REY.

MAN. DE ELIZONDO.

TRANSLATION.

Don Philip, by the grace of God king of Castile, Leon, Aragon, the Two Sicilies, Jerusalem, Navarre, Granada, Toledo, Valencia, Galicia, Majorca, Seville, Sardinia, Cordova, Corsica, Murcia, Jaen, the Algarves, Algeciras, Gibraltar, the Canary Islands, the East and West Indies, and the islands and

³ Doc. 55, in vol. II. of this series.

⁴ In the English translation in Chalmers, *Collection of Treaties*, II. 173, though not in the MS. Spanish ratification, these are marked as separate articles, 6 and 7.

⁵ Doc. 104.

mainland of the Ocean, archduke of Austria, duke of Burgundy, Brabant, and Milan, count of Hapsburg, Flanders, Tyrol, and Barcelona, lord of Biscaya and Molina, etc. Whereas there was concerted and signed at Madrid, on the fourteenth of December of the past year, seventeen hundred and fifteen, by the Marquis of Bedmar and Sir George Bubb, in virtue of the necessary powers given them for that purpose by me and by the Most Serene King of Great Britain, my very dear and beloved brother and cousin, a treaty of declaration and explanation respecting certain of the articles previously concerted at Utrecht in the year seventeen hundred and thirteen between this crown and that of England, concerning peace and commerce, the tenor of which new treaty is, in the Castilian language, as follows :

Whereas since the treaties of peace and commerce lately concluded at Utrecht, on the thirteenth of July and ninth of December, 1713, between his Catholic Majesty and the late Queen of Great-Britain of glorious memory, some small differences remained respecting commerce and the course thereof, and their Catholic and Britannic Majesties are disposed to maintain and cultivate a firm and inviolable peace and friendship, they have, for attaining so good an end, by the two ministers reciprocally and in due form authorized for this purpose, caused the following articles to be concluded and signed.

1. British subjects shall not be obliged to pay higher or other duties for goods which they shall bring in or carry out of the several ports of his Catholic Majesty, than those which they paid for the same goods in the time of King Charles the Second, settled by cédulas and ordinances of the said King or his predecessors ; and though the *pié del fardo* ⁶ be not founded on any royal ordinance, yet his Catholic Majesty declares, wills, and ordains, that it shall be observed now and in the future, as an inviolable law ; which duties shall be demanded and collected, now and in the future, with the same advantages and favors, from the said subjects.

3. His Catholic Majesty allows the said subjects to gather salt in the island of Tortudos, they having enjoyed that permission in the time of King Charles the Second, without interruption.

5. The said subjects shall enjoy all the rights, privileges, franchises, exemptions, and immunities whatsoever, which they enjoyed before the last war, by virtue of royal cédulas or ordinances, and by the articles of the treaty of peace and commerce made at Madrid in the year 1667, which is fully confirmed here ; and the said subjects shall be treated in Spain in the same manner as the most favored nation, and consequently all nations shall pay the same duties on wool and other merchandize which shall be brought into, or carried out of these kingdoms by land, as the said subjects pay on the same goods which they shall import or export by sea ; and all the rights, privileges, franchises, exemptions, and immunities, which shall be granted or permitted to any nation whatsoever, shall likewise be granted and permitted to the said subjects ; and the same shall be granted, observed, and permitted to the subjects of Spain in the kingdoms of his Britannic Majesty.

[6.] And as there may have been innovations in commerce, his Catholic Majesty promises to use all possible endeavors on his part for abolishing them,

⁶ A tax on foreigners, apparently.

and for the causing them to be by all means avoided in the future. In like manner his Britannic Majesty promises to use all possible endeavors for abolishing all innovations on his part, and for avoiding them by all means in the future.

[7.] The treaty of commerce made at Utrecht on the ninth of December, 1713, shall remain in force, those articles excepted which shall appear to be contrary to what is concluded and signed this day, which shall be abolished and of no force, and especially the three articles commonly called explanatory; and these presents shall be approved, ratified, and exchanged on both sides within the term of six weeks, or sooner if it be possible.

In witness whereof, and by virtue of our full powers, we have signed these presents, at Madrid, on the fourteenth of December, one thousand seven hundred and fifteen.

The Marquis of BEDMAR.

GEORGE BUBB.

Wherefore, having seen and examined the said new treaty, I have resolved to approve and ratify it, and in virtue of these presents do approve and ratify it, in the best and most ample manner possible, promising, on faith of my royal word, to fulfill completely what is therein contained and expressed, to which end I have commanded these presents to be issued, signed by my hand, sealed with my privy seal, and attested by my undersigned Secretary of State. Given at Madrid on the twenty-fourth of January, one thousand seven hundred and sixteen.

I THE KING.

MAN. DE ELIZONDO.

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